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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, SEPTEMBER 30, 1981

Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
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Barlow, W. W. (Cambridge PC) for Mr. Stevenson  
Sheppard, H. N. (Northumberland PC) for Mr. McNeil  
Taylor, J. A. (Prince Edward-Lennox PC) for Mr. Johnson  
Van Horne, R. G. (London North L) for Mr. Eakins

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant to the Minister

Witnesses:

✓ Hebert, T., Private Citizen  
✓ Sénécal-Harkin, A., Private Citizen  
✓ Simmons, H., Private Citizen  
✓ Wilson, K., Private Citizen

From the Ontario Trucking Association:

Dean, P., Chairman of Labour Relations  
Parke, G. M., Executive Director, Public and Regulatory Affairs  
Strauch, M., Executive Director, Carrier Operations





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 30, 1981

The committee resumed at 2:07 p.m. in room No. 151.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I'll recognize a quorum. We have five presentations to be made this afternoon. The first is by Mr. A. Sénécal-Harkin.

Mr. Sénécal-Harkin: Premièrement, j'aimerais dire que mon nom est Alain Sénécal-Harkin. Je suis diplômé de l'université d'Ottawa en sociologie. Je suis diplômé en éducation de l'université de Toronto et j'ai un brevet d'enseignement de l'Ontario pour l'enseignement aux niveaux intermédiaire et sénior. Je suis présentement employé comme secrétaire-exécutif.

Ce comité peint précisément la toile de fond en ce qui a trait à mes attentes pour les jugements favorables aux amendements au projet de loi numero 7. Je condamne vivement ce gouvernement et ce comité parlementaire qui obligent que, pour que je sois compris, je m'exprime dans une langue autre que la mienne. Je me présente aujourd'hui devant vous comme simple citoyen, mais moyennant ce fait, je suis un francophone gai de cette province qui ne vient pas réclamer mes droits, mais qui vient vous dire et vous présenter un avis.

Wardell Pomeroy, a noted sociologist and sex researcher, once noted that there is probably more nonsense written about homosexuality, more unwarranted fear of it and less understanding of it than any other area of human sexuality. Although an interesting way of looking at homosexuality as a misunderstood and feared element of sexuality, it does not ask why there is this fear. I shall try to answer this question.

2:10 p.m.

I believe to understand the present situation of fear you must consider the past. Anthropological, archaeological, historical, sociological and political accounts of the Chinese, Japanese, Egyptian, Gallic, Celtic, Roman, Babylonian and Syrian civilizations indicate that homosexuality in these ancient and advanced societies was not an anomaly, not a deviation nor a crime. Homosexuality, both male and female, was a natural expression of love, caring and affection, both physical and emotional.

Wainwright Churchill, another noted researcher, has shown that much of the transformation of the so-called western world can be traced to the emergence of Judaeo-Christian philosophy. To



explain this influence in matters of sexuality, he recalls the fifth century before the modern era when the Hebrews were faced with, if not numerical annihilation, then at least cultural assimilation. The Hebrews were basically the remnants of an ancient civilization that had waged many wars. With their cities in ruins, they easily became prey to Babylonian, Syrian, Libyan and Egyptian slavers. Constant wars between the various empires guaranteed the changeover of slaves, the loss of identity and, basically, extinction.

In much the same way as certain European and Oriental monarchies completely modified the language at regular intervals to maintain class control and distinction, Hebrews began to outlawing certain sexual practices that were found equally among their members as among the so-called barbarians. The emergence of Christianity, its blending with Judaism and its rapid spread helped to create a code of behaviour that was both rigid and vengeful and has rooted itself in North America.

Rome fell to Christianity, in many respects, before it fell to the so-called barbarians. We now talk about decadent Rome, but this was as a result of Roman citizens trying in a way to overcompensate for strict laws which governed their lives to the very last detail.

Although we tend to view Greece as having been a hotbed of homosexuality, this is a rather distorted view of reality. I might remark also that we tend to dismiss Greek history by the, "Well, you know those Greeks," remark, which is a perfect example of the racist and prejudiced views condoned by many governments and societies.

Once Greece had been conquered by Rome, the Christian laws took hold. An example of the cruelty of the Roman view at that time was in the city of Corinthia, where a senator had been arrested because he was a homosexual. The outcry of the citizenry was so great the Roman conquerors had to allow this man to be freed. Not to be outdone, the Romans subsequently held a feast in honour of the senator and invited the citizenry. Ten thousand men, women and children entered the arena but never left. That is why, after the golden age of Greece, homosexuality was condemned for a number of centuries.

The acceptance of Judaeo-Christian ethics in Europe has had its effects. Although we can justly point to the emergence of governments, which began to legislate matters of law, morality remained the domain of the church, or at least of church law. The British legal code, upon which Canadian and Ontario laws are based, was almost entirely imported to fill the post-nation-founding period. The British legal system, although an important first consideration for the division of powers between church and state, was in reality completely influenced by Judaeo-Christian tradition, either by the Celts or by the Saxons.

It would be simplistic and utterly facile to focus all the problems lesbians and gay men have on the religious tradition. However, these traditions account for a very important part in the oppression of lesbians and gay men. I am here to discuss not

prejudice, but oppression. Institutionalized prejudice is oppression, because it rests solely on the interests of those in power: family, schools, clergy, government and even friends. Oppression is when those holding power or authority systematically impose burdens, penalties, sanctions upon relatively select and seemingly powerless segments of society. This may take many forms but, before considering this, let us consider the size of population I am talking about.

It is often knocked about that 10 per cent of any population is homosexual. In Kinsey's reports in the 1940s and 1950s and subsequent reports by the Kinsey Institute in the 1960s, 1970s and now the 1980s, 37 per cent of white males have at least had one overt homosexual experience after puberty. Thirteen per cent of them had expressed that, although they still reacted erotically, the laws and their society forbade them. They knew what they were going for. Thirteen percent of women after puberty also had homosexual encounters.

In a letter to the National Gay Task Force in 1977, Paul Gebbard of the Kinsey Institute for Sex Research stated:

"I have been recently reworking the 1938 and 1963 data to include only 'experience' as defined as deliberate physical contact intended by at least one of the participants to produce sexual arousal. Tabulations based on these criteria indicate the following: 13.95 per cent males and 4.25 per cent females, or a compounded average of 9.13 per cent of the living population, have extensive or incidental exclusive homosexual relationships."

Therefore, when we talk about oppression, let us be clear in our understanding that we are not talking about two people in this province or one person in this city; we are talking about a sizeable part of the citizenry of Ontario.

One of the milder forms of oppression is myth-building. Myth-building has two reasons for existing and why it continues. One, it helps us deal with something or someone we do not know. Two, it gives us a reason not to question further. The myths in reference to lesbians and gay men are numerous. I was here on the evening of your first presentation, and I understand a few of them were discussed. However, it never hurts to review.

Seduction versus reproduction: Because lesbians and gay men are believe not to be able to reproduce, they are believed to seduce. Parents seduce their children, teachers seduce their students, doctors seduce their patients. This goes contrary to the fact that many lesbians and gay men are parents.

Continuing along this mythology, 95 to 98.9 per cent of child-molesting cases in the US and in Canada involve heterosexual men who, either as uncles, fathers or brothers, tend to abuse their children or relations. A lesbian or gay teacher who would have been found to have a sexual liaison with a student would more than likely be fired or legally sanctioned in this province. Having gone through the education system here last year, I discovered that heterosexual teachers who are discovered to have



sexual liaisons with their students are asked to transfer to another school.

Myth number two--one that is very important and perhaps explains the first element, or is at least in conjunction with it --is the one that lesbian and gay male sexuality, and particularly their sexuality, is the only element to be considered and that they are constantly on the make. This mythology has surfaced because of the view that homosexuality is a purely animalistic instinct. It focuses only on the sexual component and loses all sense of the remaining. It is a focus on sexual rather than homosexual or (inaudible).

To quote William Simon and John A. Gagnon: "We have allowed the sexual object choice of homosexuals to dominate and control our imagery and let this part of her/his total life experience appear to determine all her/his products, concerns and activities."

2:20 p.m.

A third myth is that homosexuality is an illness, and to this Wardell Pomeroy states:

"If my conception of homosexuality were developed from my practice, I would probably concur in thinking of it as an illness. I have seen no homosexual man or woman in practice who was not troubled, emotionally upset or neurotic. On the other hand, if my concept of marriage in the United States were based on my practice, I would have to conclude that marriages are all fraught with strife and conflict and that heterosexuality surely is an illness...I have seen many homosexuals who were happy...To insist that they are abnormal, or sick, or neurotic because they are homosexual is to engage in circular reasoning which smacks of blind moralism founded in our Judaeo-Christian heritage."

Let us now consider oppression as it existed and exists. I have talked about Rome. Most of you are perhaps familiar with the term "faggot," which is used in the derogatory sense towards gay males. Its origin is primarily from France, Spain, Portugal and Rome where, during the inquisition, Roman fathers believing that it was not proper to have women, handicapped or heretics around would burn them. Thus the term of faggot. If you were not burned, you were hung.

Let us now look at Ontario in 1981. With a conservative estimate of 9.13 per cent of the population we have institutionalized prejudice, which is supported and aided by the church, some families who would rather see their sons or daughters dead and by the governments.

Let us consider the manifestation of this oppression in Ontario. Too many individuals, the government included, believe wrongly that lesbians and gay citizens of Ontario have no reason to complain in respect to discrimination. It is primarily because no one is willing to listen officially to these complaints that this idea of nonoppressed minority exists. It is a myth supported and fed by the government.



We have all heard, and I am sure you have also heard, the accounts of discrimination either legally, institutionally or religiously sanctioned by our society. However, I wish to bring only minor illustrations of why it is necessary to include sexual orientation as a prohibited ground for discrimination.

1. The right to gather: Lesbian and gay males who form the community in Ontario and in Toronto have not received equality in the right to gather as would supposedly be guaranteed by our interpretation of the constitution. The recent McDonald commission findings indicate quite clearly that the lesbian and gay communities in Canada are suspect of almost everything and are under surveillance.

2. Toronto bath raids and subsequent findings of police infiltration of demonstrations indicate that lesbians and gay men are not allowed the freedoms of other segments of society to demonstrate and vocalize their dissension or disagreement with policy.

3. Lesbian and gay men in the city of Toronto and in this province of Ontario suffer innumerable beatings at the hands of queer-bashers, and this on a daily basis.

4. Legal battles for child custody because of the views of the judiciary, a government ally, and antiquated laws which are supported by the state, only support the view that we have institutionalized discrimination.

5. Police entrapment and the lack of co-operation by the constabulary where individuals are being harassed or beaten are numerous. The police who go to the apartment of a person and who say, "Oh, you're gay, you're a lesbian," regard it as a domestic matter, not of importance. There are eight unsolved murders in Toronto, eight gay victims of Toronto society's hatred, and yet the police continue to search within the community for the murderer. Whatever happened to the heterosexuals who are free in this world? Are they free from suspicion?

6. Discrimination in employment: A heterosexual woman teacher in a north Metro board in this city has been told to either resign or be fired. She is living with a gay man, and this is reason enough for her to be branded a lesbian. She has subsequently found another job.

The response to the communities' demands for sexual orientation to be included in the Ontario Human Rights Code have fallen on deaf ears. Many companies, organizations, unions, et cetera, are allowed to remove from their statutes and practices attitudes which would hinder the relationship of part of its membership. They are in fact stating categorically that people who have been discriminated against because of certain characteristics, notably sexual orientation, shall no longer be the victims of oppression, shall no longer be the scapegoat of poor management, social, political, economic or otherwise.

Attitudes are changing but they are slow, or so we are told by the government. This is because the government of this province

condemns lesbians and gay men, both directly and indirectly, to suffer an oppression which is both senseless and destructive.

The government of this province, although there hasn't been a change in years, refuses to acknowledge the sociopolitical existence of lesbians and gay men. Numerous Labour ministers and Attorney Generals have come and gone, all refusing to remove the noose from the throats of lesbians and gay men in our community. Both these positions condone the oppression of lesbians and gay men in the province.

When the federal government's omnibus bill was passed in 1969, it was believed at that time that homosexuality had been legalized. There had never been a question of a homosexual being legal; it was always a question of what they were doing that was illegal. However, raids on homes and businesses throughout the province attest to Ontario's particular view that lesbians and gay men should not be allowed their full civil rights.

It is the province of Ontario and the government of Ontario which allow school boards to dismiss, without logical reason, competent men and women. It is the province of Ontario or, more specifically, the government of Ontario which subverts its own laws by appealing decisions made by its own judiciary in favour of lesbians and gay men.

It is the government of Ontario which provides schooling for its police officers and such interesting curricula as "Queer, Paki and Hebe jokes," which are told to many classes. It is the government of Ontario which selectively enforces liquor, special and other licences against lesbian and gay community centres. It is the government of Ontario which refuses to accept its own human rights commission's recommendations.

It is the government of Ontario which encourages hysteria in the press and other media by omitting to challenge falsehoods concerning the lesbian and gay community. It is the government of Ontario which supports the circular reasoning, always by omission, that granting protection of lesbians and gay men will in fact give them licence to seduce, proselytize, et cetera. It is the government of Ontario, by omission, which endangers and destroys the lives and livelihood of hundreds of thousands of lesbian and gay school children by not presenting a balanced view of lesbian and gay lifestyles.

It has been rumoured that many MPPs, opposition and government, are in accord with the inclusion of sexual orientation but that a power within the government refuses this to be. I must ask why. Surely it is not economics. It is obvious that the government requires scapegoats to be pulled out at appropriate moments to ensure victories in certain ridings.

It is also obvious that not only does the government not care about the lesbian and gay community in Ontario in general but also it does not consider worthy of protection members of the cabinet and members of the Legislature who are lesbians and gay men. Will it take a bath raid or a bawdyhouse charge against a minister before the government changes its mind, or will a

homosexual person have to rise up in government and condemn it for its policy on custody rights for children?

In a few hours you will be safely away in a closed area to decide about this question. Do not be fooled that only lesbians and gay men across this province are interested in this question. I guarantee that you will have not heard the last when you hear the last submission.

Cette province ne continuera pas dans cette direction avec les politiques actuelles, car la population s'éveille et bientôt, comme dans la vraie marche historique, il y aura un renversement politique du régime et des politiques discriminatoires du gouvernement actuel.

2:30 p.m.

Mr. Van Horne: I would like the gentleman to explain the last sentence in English before he got into French. He said we haven't heard the last; could he elaborate on that?

Mr. Sénécal-Harkin: Yes. You haven't heard the last of the people in this province speaking out against discriminatory policies that are abetted by the government, because I think this process has been going on, from documentation that I have been looking at, since 1971 or 1972. You can be sure that the lesbian and gay communities will continue to present material, but we are not the only ones who are concerned about this and I can guarantee that you will hear something.

Mr. J. A. Taylor: Just an observation, Mr. Chairman. I certainly interpreted your remarks, Mr. Harkin--

Mr. Sénécal-Harkin: The name is Sénécal-Harkin, please.

Mr. J. A. Taylor: Mr. Sénécal-Harkin--and I apologize for the pronunciation. I found your remarks really a stinging indictment of the Conservative government of Ontario, and I presume that is what you meant them to be. I saw very little restraint--I am not here to chastise you--in that very strong criticism of the Ontario government and its present and past policies.

I don't know the circumstances of the firing of the North York teacher, but I would remind you that there is legislation that mandates moral precedent. I don't know whether that teacher was fired, as you call it, or left because of his or her own lifestyle, whether that was living with a person of the opposite sex out of marriage, whether it was living with a person of the opposite sex not only out of marriage but, as you interpret it, because that person was gay. We don't have those facts, but you have certainly been critical of that dismissal.

As I understand the response of the people of Ontario, they are very concerned that the teachers of the young people of this province do show moral precedent. It is a part of the legislation, and I think we can hardly condemn a board of education if that is



what the foundation of that particular dismissal was. But I am only going by the remarks you have made.

I have sat here for only a short period of time. I have heard submissions on behalf of gay persons, and many of them have been very reasoned and very temperate. Frankly, I don't find your remarks in that same category. I have heard gay people complain that they have closeted for a very long time but, in the short time I have been sitting on this committee, those closets must certainly have been open because there have been many representations made to the committee--and not with any bowing of heads; I don't think there should have to be any apologies for coming before this committee.

Just as you have come forward, others have come with their badges pronouncing their disposition, if that is what a gay person is.

I recognize there is a difference, and I don't judge that difference. I think what is judged is manifestation of that difference in terms of behaviour. I think some of that behaviour is not acceptable to the general population today, but surely it is not being hidden. You have come forward with your T-shirt, broadcasting your particular propensity, and we have had other persons similarly advertise theirs; so I don't accept the criticism that you have levelled today at the policy of the government on its legislation.

Mr. Sénécal-Harkin: Can I ask a question of clarification on his remarks?

Mr. Chairman: Yes. I do not think he has to answer it, but if you wish to comment, certainly.

Mr. Sénécal-Harkin: I will make a comment then. Since there was no translation, you are perhaps not aware that I have a bachelor of education from this province. Last year, when we were discussing morality and what were the conditions, it appeared that as long as one was doing a fine job as a teacher--it was not debauching, as the professor happened to use the term--then one was a moral person.

The person in North York who was asked to either remove herself or be dismissed--you are judging her when I believe we should be judging the school board. It took this action for no apparent reason, other than the fact that she was living in a house with someone else. We all know what the rental situation in this province is like and how wages are affected, and there should be absolutely no qualms about two people living together.

In 1977, 52 per cent of the people in this country agreed that there should be no laws prohibiting discrimination against lesbians and gay men. So I would say the view of the majority of people in Ontario is not reflected by your comments. Ontario is part of the country.

Ms. Copps: Just to clarify that: You said there were "no laws prohibiting," and I think it is "no laws permitting."

Mr. Sénécal-Harkin: Permitting.

Mr. Brandt: One question, if I might, in regard to the allegation made with respect to police training. Have you ever attended the Aylmer police college?

Mr. Sénécal-Harkin: My father is a policeman.

Mr. Brandt: You are stating that as part of the course, to quote you, jokes regarding "queers, Pakis and Hebes" are an integral part of the course?

Mr. Sénécal-Harkin: I would say it is presented at every graduating class.

Mr. Brandt: I would certainly disagree with you. I have been in attendance at some of those classes, and I have never personally witnessed or heard any of it.

Ms. Copps: I think possibly the point Mr. Taylor was trying to make is that your presentation is a little stronger than some of the others we have heard, and some of the areas that you have touched on--for example, the teacher in North York--highlight a problem.

However, since Mr. Taylor has only entered the committee hearings fairly recently, he may be interested in taking a look at the brief that was presented by CGRO. It does outline in a number of instances cases where people have been locked out from their jobs simply on the basis of sexual orientation. In fact, as was proved by the very famous case of John Damien, they do have no legal recourse. I think that has certainly been set forth in a number of court decisions.

You mentioned something that I was interested in pursuing a little bit; that is, that the Ontario government has appealed decisions of the judiciary which would have ruled in favour of homosexual persons. Can you clarify that a little bit?

2:40 p.m.

Mr. Sénécal-Harkin: Actually there are two cases right now before the courts. One of them is very well known, and that is the Body Politic case. That is a community newspaper. I believe the original charges were using the mails for sending out obscene material.

There is another case which I have been told I am not supposed to talk about because it is right now before the courts again--it actually is in front of the court. That is where a person has been acquitted by the courts for a bawdy-house charge and the government is appealing it.

Ms. Copps: I think you used the words "rumour has it" when you said a number of members on all sides of the House support the inclusion of sexual orientation as prohibited grounds for discrimination. If that is the case, and if there is majority support from community, as evidenced in the Gallup Poll 1977, why

do you think the government has chosen not to introduce it as one of the prohibited grounds?

Mr. Sénécal-Harkin: I would say it goes back to the beginning of my presentation, that there is a lot of fear amongst members of the Legislature and amongst members of the community at large--probably the 40 per cent who were not sure or whatever--primarily because they are not really sure about what lesbians and gay men are about and what we are asking for in the way of the granting of sexual orientation.

Sexual orientation in this case is that we are in an equal position with other people in this province--no more, no less. It does not mean demanding lesbian or gay teachers in the school. It is not demanding this, that or whatever. It is simply saying that for us to be discriminated against because of one aspect of our life is nonsensical, and we should have the right, as any other person in this province, to "compete" or whatever.

However, members of parliament are chosen from the general population, and the reality is that they have also grown up with the myths that I talked about. Perhaps because they are now members of parliament, we can expect some progressive thinking and some foresight, but I think the old prejudices resurface and always hit back.

Ms. Copps: You may not be able to answer this, but it may be information we could get from CGRO. How many people in this province are openly gay--belonging to an organization, coming out and speaking to this committee, that kind of thing?

Mr. Sénécal-Harkin: CGRO has 30 members that I know of, and some of the groups have up to 300 or 400 members. I would say a total of no more than 10,000 people in this province.

Ms. Copps: So a conservative estimate would be about 80,000 people?

Mr. Sénécal-Harkin: Ten per cent of eight million would be 800,000.

Ms. Copps: So you would actually be looking at only 10,000 out of 800,000 people who are openly gay?

Mr. Senecal-Harkin: Yes.

Ms. Copps: Have you experienced personal discrimination?

Mr. Sénécal-Harkin: I usually walk with a walking stick in Toronto, primarily because I have been threatened in my building, in my elevator, on the street, at the faculty of education last year, with having my limbs broken. If that did not succeed, there was always death.

Ms. Copps: And you wear the pink triangle all the time?

Mr. Sénécal-Harkin: Always.



Ms. Copps: I have one other question, and this is just for information. It is something that I have not asked anyone else, but it has come up time and again. You tend to refer to "gay men and lesbians." Why do you not just say "gay men and women"?

Mr. Sénécal-Harkins: There is an historical precedence for the use of "lesbian." On the island of Lesbos, which was part of the Greek ancient world, there was a community of women, not particularly lesbian in the term we have now. It was a school of lettered women who were thought to be the sages of the time. When Christianity ran through Greece, this fear of women rose and they destroyed the community on Lesbos. So there is an historical precedent, because they said they were all homosexual women and that has been attributed there. Gay men have not had that kind of historical data they could relate to, although gay does have that.

Ms. Copps: So lesbians actually prefer to be called lesbians as opposed to gay?

Mr. Sénécal-Harkin: There are different factions. Very few lesbians call themselves gay women.

Mr. Chairman: Any other questions? I think Ms. Copps has served notice that the gay community may have to address, as all of us do, the antifeminist terms. I do not know if she is serving that notice or not. She has served us with several notices in that area.

I hope you will allow me to have one comment as a member of the Legislature with reference to the rumour: I very rarely take stock in any rumours, even less in political rumours.

Mr. Howard Simmons.

Mr. Simmons: You have my submission. I will not be reading it, although I will be referring to it throughout. If anybody wishes to ask questions while I am speaking, please feel free.

The issue I am addressing is the one of reverse discrimination, which is basically sections 14 and 26(c) of Bill 7.

Just briefly, we might think of what we want a human rights code to do, and I would think we would want it to have some conception of justice which would be to each according to his abilities and, closely related, each according to his work. In other words, individuals should be rewarded on the basis of their ability and of their accomplishments and the work they do as opposed to because of their race or religion or sex. Having said that, obviously it is something we are assuming throughout, and I think that basic assumption has to be kept in mind when we are considering the provisions of section 14.

Let us briefly go through what sections 14 and 26c attempt to do. The Human Rights Code sets out things that are discriminatory--I will be just talking in terms of race, religion and sex, although obviously it covers other things--and

prohibiting discrimination on those kinds of grounds. Section 14 says you can discriminate on those grounds--you can discriminate on the basis of race, you can discriminate on the basis of religion, you can discriminate on the basis of sex--if it is a special program that has been set up to relieve hardship or economic disadvantage.

It then goes on to provide that the human rights commission can look at the program and in its decision decide that they do not think it is properly for that purpose and not approve it but, unless it does, that one will continue. It is interesting that the approval of the human rights commission--in other words, their basic supervisory function on programs that discriminate--does not apply to any program of the crown or an agency of the crown.

2:50 p.m.

Section 44(1) of the bill says that the Ontario Human Rights Code does apply to the crown and all its agencies, but section 14(5) excludes that and says it does not as far as a special program is concerned.

Section 26c is one that actually gives the human rights commission the power to recommend, on its own, a special program. If it recommends a special program, again it can be, and obviously would be, discriminatory, otherwise it would not be necessary; and that, then, complies with section 14.

What these provisions do is allow discrimination that otherwise would be discrimination under the Ontario Human Rights Code.

Now what we want to take a look at is, what kind of discrimination is it that you are going to allow to continue?

Probably one of the most useful examples is the American one dealing with Allan Bakke; it is probably the best known, although there are other cases and I will refer to one other American one. This one, as you may know, involved an American university student who was applying to go to medical school at the University of California.

As you can imagine, the medical school is very difficult to get into, and there are a very large number of applications, probably several thousand, for 100 positions. Obviously they looked at marks and the contribution a person could make to the medical profession, and all sorts of standards that one would expect, in somebody applying to a medical school; except that, of the 100 places that were available, 16 were set aside. In other words, when you applied, you came under the category of the 84.

The 16 other places were set aside for special students. It was called a special admissions program. This was for minority students, who were defined as including Black, Chicano--which is Mexican American--Asian and American Indian; and there were two separate admission committees.

Allan Bakke applied, and he was refused, although several

other people who had much lower marks than he did, who clearly did not qualify under the standards that Allan Bakke had, were admitted because they were under the category of Black, Chicano, Asian and American Indian. And there were two completely separate admission standards.

Mr. J. A. Taylor: If you would allow an interruption--

Mr. Simmons: Yes.

Mr. J. A. Taylor: You are talking about California?

Mr. Simmons: Yes.

Mr. J. A. Taylor: Are you going to deal with the Ontario situation on that?

Mr. Simmons: Yes. I will, right after; and I think it is--

Mr. J. A. Taylor: We have a similar situation here, do we not? I do not know about admissions boards, but certainly in terms of preferential treatment to women and native peoples, do we not?

Mr. Simmons: Yes.

Mr. J. A. Taylor: I was just wondering if you were going to touch on the Ontario situation as opposed to--

Mr. Simmons: I refer to the American situation for a very important reason, and that is that all our concepts in human rights for the last 15 years come from the Americans.

For example, the term "affirmative action" is American. As a matter of fact, it was first used in the US in, I think, 1965, in an executive order; the first use of the word, as I understand it, was an executive order of the US to try to fight discrimination. It said that all applicants for federal contracts are to refrain from employment discrimination and to take affirmative action to ensure that applicants are employed on the basis, and so on, without discrimination. Now that, of course, has expanded. The term is obviously a very well-known Canadian one now. Its meaning varies among the listeners and the speakers, and you will often see arguments, people fighting over affirmative action, and each means something entirely differently.

It was interesting, on Morton Shulman's television program last week, the mayor of Toronto and the Minister of Culture and Recreation were arguing over whether there was an affirmative action program. They clearly were not talking the same language, and they would say, "No, that's not affirmative action", and one would say, "Yes, it is affirmative action." The thing about it is that they were all right and they were all wrong, because it does mean almost anything.

But the American one is the model, and that is the one that followed. For example, American court decisions are constantly



followed by boards of inquiry set up under the human rights code. Their decisions are followed, looked at--the whole section 10 of the proposed bill which deals with what is called constructive discrimination never appeared in the previous human rights code. It appears now, and that is strictly an American concept. The American courts developed the idea of discrimination even though there was no intent to discriminate if it unfairly affects certain people.

The idea of contract compliance, which is in section 23 of your bill, is strictly an American concept used widely in the United States and now applying in Canada.

So while I am going to use two American examples, because they do illustrate my point best, it is not because the Americans have nothing to do with us. What I am saying about the American examples is that they are well known by all Canadian human rights commissions, they are followed or looked at seriously and seriously considered by all our commissions throughout Canada, and the terminology, the concepts, and the ideas are all American.

When you look at the Allan Bakke case, you might say, "My goodness, that is clearly a quota system," I would think. What else would be a quota system if that isn't? Well, that wasn't called a quota system; that was called an affirmative action program.

You can appreciate, when we're looking at the meaning of words, the meaning can sometimes be crucial in what you are thinking about. People who support programs of reverse discrimination or treatments of preference never use terms like "affirmative action."

"Goals and timetables" is another phrase that is used or, if you can believe it, "equal opportunity"--who isn't in favour of equal opportunity? But if you see how the term is used in the United States in the sense of an equal opportunity employer, it doesn't mean what one would ordinarily think of as an equal opportunity employer. It means an employer who discriminates on the basis of race or sex in order to promote disadvantaged groups.

There are terms that are more neutral, such as "benign discrimination" or "positive discrimination." Then there are terms that have an unfavourable tone to them, such as "reverse discrimination" or "quotas" or simply "discrimination." The people who support reverse discrimination never use those terms. They always talk in terms of goals and timetables and affirmative action and they may not mean what they say--it's hard to know.

As I said, in the Bakke case it was called "affirmative action," and their program was called a "special admissions program." Section 14 calls it a "special program," although I guess if it were in a university setting it would be called a "special admissions program" or perhaps, in employment, a "special employment program." The words are the same. Where do they get the words from? The words came from the United States.

You asked about the Canadian setting. One example is Osgoode

Hall Law School at York University--one of the better-known law schools--which published a newsletter for Osgoode Hall law graduates, called How Do You Get Into Law Schools These Days? I will just quote briefly:

"In 1977, Osgoode's faculty council, in recognition of its responsibility to provide a quality legal education meeting the needs of the entire community, voted to reaffirm the commitment to native people and mature students and to also establish a similar procedure for applicants disadvantaged by racial, ethnic, linguistic, cultural or economic factors. To highlight its concern, the council voted to reserve up to 90 first-year places for mature native and disadvantaged applicants, with approximately 30 in each group."

Is there a difference between that and Bakke? I don't see any. The difference is only that they didn't fill the 30 places. They didn't have enough disadvantaged people--or however the program worked. But the intention was there. Is that widely known? Who else? I have no idea, but I don't know how widely known it is generally.

Mr. J.A. Taylor: I know some universities that do the same thing.

Mr. Simmons: Yes. In clear breach of the existing Human Rights Code, unless they have an exemption.

3 p.m.

Mr. J. A. Taylor: Incidentally, I am pointing it out. I am not putting a seal of approval on the thing. I agree with you. I question how many people really appreciate the extent of this type of discrimination without passing judgement on it.

If I could again interrupt, Mr. Chairman--because we have been invited to do so--I suppose it is the concept that has caused some concern to provincial governments and the federal government in terms of the charter of rights and the free movement of goods, services and people.

The hiring of native people in the north by the federal government and Newfoundland's mandating of Newfoundland labour, I suppose in some respects are examples of that same issue. Would you not agree?

Mr. Simmons: Yes. Native people are sort of a separate question which I am not familiar with, but yes, the concept would be the same.

Mr. J. A. Taylor: I am sorry to interrupt you.

Mr. Simmons: No, no, please. I am quite happy. As I say, I am not reading from my submission.

Perhaps I could use another American example, even a more recent one, although not quite as well known as the Bakke one. This is one dealing with someone named Brian Weber. I will just go

into some of the details of what happened here. Allan Bakke was a student; Brian Weber was a worker in a unionized plant. He had been working at the plant for five years, and his plant wanted to have training for craft workers. They needed more craft workers in the plant. He wanted to upgrade his skills, and he applied to join this craft program. There were a lot more people applying than there were spaces available; so how did they choose? They chose on the basis of seniority, a perfectly reasonable system in a union setting.

There was only one problem. There were two seniority systems: one for minorities, who in this particular case in Louisiana were black, and one for all others. How they chose was that they would take one from one seniority list and one from the other seniority list. He had more seniority than many of those chosen and he didn't get picked.

Mr. Eaton: (Inaudible).

Mr. Simmons: That is right. The thing about this one is that we are not talking about some isolated situation somewhere south in Louisiana. The company was Kaiser Aluminum, the union was the United Steelworkers of America and this was part of the collective agreement. I don't know how many people the collective agreement applied to, but Kaiser has probably something like 15 other plants throughout the United States. Perhaps I can just quote the words of their collective agreement, which are on page five of my submission, to show what happens and to be careful of the words people use.

Their collective agreement said: "It is further agreed that the joint committee"--which is one of labour and management--"will specifically review the minority representation in the existing trade, craft and assigned maintenance classifications in the plants set forth below and, where necessary, establish certain goals and timetables in order to achieve a desired minority ratio. As apprentice and craft jobs are to be filled, the contractual selection criteria shall be applied in reaching such goals; at a minimum, not less than one minority employee will enter for every nonminority employee entering until the goal is reached ..."

Thirty years ago you wouldn't see this in print. Universities 30 or 40 years ago used to have quota systems where certain people by religion and colour were not let in. These weren't things they published; it was known, but it was kept hidden. It wasn't something they would go and make a speech about.

But here we have major corporations entering into a collective agreement providing that. We are not talking about just one craft. It was each particular craft; in other words, electrical, plumbing. What was the goal? The goal was 39 per cent, because they looked at the surrounding area and a population study showed that in that particular surrounding area about 39 per cent of the people were black and therefore they wanted the goal to be 39 per cent in each craft union.

Why would a major union and a company enter into that kind of agreement? They did not necessarily do so completely



voluntarily. The American government has a contract compliance provision such that, if you don't have certain types of affirmative programs, you lose out on government contracts; so there was great pressure on Kaiser to come through with something or else they would be losing out.

This is the case that went to the American Supreme Court, where I must say that Brian Weber lost his case. This was called an affirmative action program.

Let's talk about Canada now. Is there any reason why section 14 wouldn't permit that? Or section 26c? None whatsoever. Could the human rights commission have that kind of program? Yes, it could. If that is something you would allow to happen, then you don't need to change anything. If that is something you wouldn't want to happen, then I would suggest you would have to abolish it entirely. But as a minimum you would have to have some kind of change to section 14; otherwise, that can take place.

What is the result in the United States of this kind of thing? I have given the example of a university and of somebody in a plant. These are only examples, because these or similar situations in a minor scale are very widespread in the United States.

What happens with minorities--obviously blacks, because they have been the ones most discriminated against in the past--is that they are getting special preferences.

Then what about women? They have been discriminated against in the past; so women's groups are naturally claiming that they want to get part of an affirmative action program like this.

What about Spanish-speaking Americans, Mexican Americans or Puerto Rican Americans, who--as the term in the United States is used--are underutilized. You will see that term used. It means that they consider it discriminatory since not as many people are being used. Therefore, they want a program of affirmative action. So you start going down the list. What is now happening in the United States is that everybody wants to get a disadvantaged status. Everybody wants to be disadvantaged, because if you can prove you are disadvantaged you might be able to get something.

I do not have a complete list, but I have so far found studies done by various groups. One has been done by a Polish group, an Asian group, an Italian group, a Franco-American group, Catholics of eastern and southern European background group, and a Hispanic group. I assure you, I have not made any detailed research. I am just going to show these examples.

I quote two examples. One is of the Italian-American Legislators' Caucus. They said that the City University of New York was guilty of discrimination since 25 per cent of the student body was Italian American, while only 4.5 per cent of the faculty was Italian American. I guess they want an affirmative action program at City University of New York, which means discriminating presumably in favour of Italian Americans.

An Asian group found that there was one Asian lawyer for every 1,679 Asians in the San Francisco Bay area, although the area as a whole has one lawyer for every 250 people. The only surprise there is, "My God, there are an awful lot of lawyers in the United States."

Where does it stop? What a program like that does is, instead of promoting some kind of community harmony, you have ethnic group fighting ethnic group to try to get a preference. Everybody cannot get a preference. You now start to get ethnic groups fighting other ethnic groups. For example, blacks are writing and saying that black women shouldn't support women's groups because white women often have better qualifications than black women and therefore that would be harming the blacks. Women's groups are writing and saying that women should get greater preference than blacks since women have on average lower incomes than blacks have. The list goes on and on and on.

What kind of society do you end up with? Not one, that I suggested we started with, which is that everyone should be entitled to compete on the basis of their ability and their work and that is solely how you should be judged, not by any other standard. There should be no preference; there should be no disadvantage.

3:10 p.m.

Mr. J. A. Taylor: While you are looking through your papers, is the American legislation dealing with affirmative action programs you refer to in the form of human rights codes? Or is there a variety of legislation?

Mr. Simmons: There is some legislation that is basically similar to ours and prohibits discrimination on the basis of race, colour, creed, et cetera, which in the Weber case was interpreted as allowing those two racially different seniority programs. How they came to that conclusion boggles the mind, and one of the judges who disagreed referred to it as being like 1984. The other one is the American constitution which has provisions, but that does not cover everything such as states' rights, for example.

Mr. J. A. Taylor: The thrust of your presentation is the economic side.

Mr. Simmons: Yes. The economic and schooling, I guess, at university level. But it is mostly economics, yes.

Mr. J. A. Taylor: I was wondering whether the examples you draw are from other types of legislation, such as government contracts. There may be a variety of areas that could embody discriminatory legislation or provide a preference.

Mr. Simmons: Yes. One of the major methods used in the United States is the contract one, where if a company is over a certain size and wants to get a government contract, it is not just that they are not allowed to discriminate--which is what our Bill 7 provides, and obviously this is perfectly reasonable--but it says they also must take positive steps to use underutilized



minorities. An underutilized minority, such as in the Weber case, was that if 39 per cent of the surrounding population are a certain minority and only a small minority of about five or 10 per cent were in the craft position, therefore you must take these positive steps to hire. If you don't, you lose out on government contracts. If you have a large company such as Kaiser, that is very significant. That is why it is done.

Looking at it from the Ontario perspective, again it is the American concepts, the American ideas, the American court cases, the American people involved in human rights cases--these are things that all Canadian human rights commissions look at and that the officials consider seriously. The concepts are all theirs. We must look at what they do. Clearly, the kind of situations I told about have not happened yet in Canada.

On the other hand, I am quite sure that what has happened since is that the equivalent provision in the existing Human Rights Code, section 6a, allows a more limited but still a reverse discrimination type of program. That was passed in 1972 with virtually no debate. I looked at the debates to see, and at that time there was really no debate on it. It was just something that filtered up from the United States. Who wasn't in favour of helping disadvantaged people? We all are.

Looking at it from the Ontario perspective, we have to say that if that is happening there, and the people who are involved in administering and making these kinds of decisions look at what they do and seriously consider, and in many cases follow what they do, you take the risk that those kinds of things will happen in Ontario because, once this bill is passed, the decision is solely that of the Ontario Human Rights Commission. There is no appeal from their decision whatsoever. It is at their complete, sole and unfettered discretion.

The commission in the report Life Together has opposed quotas. They have come out and said they are not in favour of quotas. We can presumably sit back and feel a little better about it. However, that is no guarantee that their views in the future may not change.

Even more disturbing is comment from people involved in the field. For example, Walter Tarnopolsky wrote an article shortly after the Bakke case in the United States. Walter Tarnopolsky is or has been a professor of law. He is a member of the federal human rights commission. He is the president of the Canadian Civil Liberties Association. He has written numerous articles and a book dealing with discrimination laws and civil liberties. He is basically considered one of Canada's leading experts in the field and one whose views are very seriously considered.

He wrote an article right after the Bakke case, and supported the university and did not support Bakke. Anybody who is concerned with civil liberties might find that a little shocking. In his article he said, on page 10: "Although the situation may be slightly less acute in Canada than in the United States"--note "slightly less acute,"--"the statement of Mr. Justice Blackmun in the Bakke case is equally apt..." He quotes the judge in the Bakke



case with approval: "'In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. If we were to add the words "sexism" and "sex" to the words "racism" and "race," ...we would have...our program of action."

Mr. J.A. Taylor: That same professor dealt with the new concept of human rights as well, did he not, in terms of the extension of the traditional concept of human rights--race, religion, colour and that type of thing--with an extended definition that is currently in the minds of many people as entitlement as a human being? He also dealt with the conflict that may be taking place because of persons with traditional values and other persons who find that there is a need to define and ensure the extended definition of human rights. I do not know whether you are aware of that.

Mr. Simmons: No, I am not.

Mr. J.A. Taylor: Anyway, he did comment on that as well.

Mr. Simmons: The importance of what he said is the fact that he is such a leading person in the area of discrimination and in human rights in Canada. If he would basically support the university and not support Bakke, I do not think one can sit confidently back and say, "Our human rights commissions are not going to be doing that in the future."

There are different ways that one can try to equalize employment opportunities. You can, for example, search for qualified candidates. In other words, a company may in the past have had discriminatory policies or not have encouraged women, for example, to apply for management jobs. Well, they can encourage women to apply for management jobs or do any type of thing in this area. That is perfectly within the existing Human Rights Code. You do not need any section 14 to do that.

You can change hiring policies. For example, the fire department in the city of Toronto used to have a policy of simply stockpiling applications and then, when they needed somebody, they would just take this big long pile of applications and go through them. It was considered that perhaps that discriminates against people who have recently come to Canada, and they have changed their policy; so now, when they want new people, they simply take applications at the time. Fine, but again, you do not need a section 14 to do that. There is nothing discriminatory in changing your hiring policy like that.

The other thing is looking at job-related requirements. Maybe the requirement of a job discriminates unfairly against certain groups and is really not a necessary part of the job. If that is what you want to look at, section 10, which is one that deals with constructive discrimination, is already there.

For none of these things do you need a reverse discrimination policy. On the other hand, you get into areas such as special training. The Ontario Human Rights Commission, in its report Life Together, has supported special training and has said

that various groups often need special training, which would mean that women, or whoever, will be entitled to the company's special training, but not other people. That is clearly discriminatory, and therefore you would need a section 14 to do that.

The commission implies, but does not fully state, that it may favour preferences for women in hiring by universities. And there have been all sorts of things like annual meetings of sociologists at universities, who have said things like, "Twenty per cent of our faculty should be women within the next two years."

3:20 p.m.

Concerning advertisers, for example, in Walter Pitman's report on race relations in Toronto, done several years ago, he said that advertisers should hire so that the proportion of people in the media more accurately reflects the population in Toronto. That may be an ideal, but the only way you could do that would be by picking out people by race rather than by qualification.

In a draft report on race relations several years ago--about 1978--the city of Toronto school board wanted to have a program of preferences in hiring for minority groups. That was finally not approved by the board, but that was something that was a draft report they wanted at one time. It was never passed, but I'm saying you are getting close to the line of coming to that type of thing.

When we look at section 26 and the functions of the commission, all of them, except for 26c, are very admirable. It's a forward policy that everybody is equal in dignity, to promote understanding of the act, to develop programs of public information and inquire into incidents dealing with race relations.

The interesting one, I think, is 26e, which says one function is "to examine and review any statute or regulation and any program or policy made by or under a statute and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this act." My suggestion is that at the first meeting of the human rights commission it should make a recommendation that 26c is not in compliance with the act.

When we are looking at this, this is an area that in the next five or 10 years will be a major area in discrimination. And once a decision is made now on section 14--unlike something such as gay rights, which has been a major issue, I understand; however, you may decide that's something you can change--this would be one very difficult to change, when people have gained jobs, have felt that they are entitled to preferences, whatever it may be. The major one today is women, but it could be anybody in the future. If you are looking at a system, the system should be one of no discrimination.

Affirmative steps to help people eliminate job discrimination, affirmative steps to recruit qualified candidates,

affirmative inquiry to determine whether a test is job-related--that's all admirable. But when you start looking at affirmative action as meaning preferences on the basis of race, religion or sex, or even quotas on the basis of race, religion or sex, I think you are getting into an area that would be extremely dangerous.

Mr. J. A. Taylor: Might I probe--you can answer if you wish--as to what your profession is?

Mr. Simmons: I'm a lawyer. I taught courses at the university on civil liberties and human rights several years ago; so it's an area in which I have an interest. Unfortunately, I didn't see this to be an issue now in the meetings by following the submissions; so I thought I should bring this one to your attention. My background is on the letter.

Mr. J. A. Taylor: Thank you.

Mr. Chairman: Are there any other questions of Mr. Simmons?

Mr. J. A. Taylor: It is certainly an additional perspective, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Simmons. I think you have made your point very well.

Thomas Hebert.

Mr. Hebert: Mr. Chairman, members of the committee, I would like to deal with a particular issue in the human rights area that has been addressed by some case law under the present code, to explain to you what that case law has led to up to the present and what I think the effect of the new legislation on the area will be.

The area I intend to deal with is the practical consequence of religious discrimination in employment. That occurs most commonly in the case of Sabbatarian employees within the province who might want to keep Saturday as a religious holiday or to keep certain other religious holidays. It could also affect Moslems or any number of other minority religious groups.

Essentially it involves a clash between an employer's right to set the terms and conditions of employment, which are generally applicable to all his employees, and the employee's right to practise his religion without discrimination in employment.

What we want to achieve, I would think, as one of the main goals of human rights policy is to give the widest exposure of job opportunities to our citizens that is consistent with the demands of the employment market. Unfortunately, that employment market tends to be very, very rigid. Things are done a certain way, and oftentimes there are difficulties faced by employees who might wish certain things as a result of their religious beliefs. As I say, the classic example is the Sabbatarian employee, but there are also difficulties faced by people such as Sikhs and other individuals of various minority faiths.



There have been three decisions in Ontario up to the present time dealing with section 4 of the present Human Rights Code, which prohibits an employer from refusing "to employ or continue to employ any person or discriminate against any person with regard to employment or any term or condition of employment" because of his creed.

The first case was in 1977. It was a board of inquiry chaired by Peter A. Cumming. The name of the case was Singh versus Security and Investigation Services Limited. Mr. Singh was a Sikh who applied to a security guard firm within Toronto for a job as a security guard. At the time of his application the person doing the interviewing indicated to him that he would have to shave his beard and remove his turban and wear the standard uniform in all respects, including the cap, in order to be allowed to work for this company. Mr. Singh explained to the person doing the recruiting that that was impossible for a Sikh and requested some accommodation, which the individual refused.

On the next day he complained to the human rights commission. They started a very long proceeding, which eventually led to a decision by a board of inquiry that the requirement that a cap be worn and that a security guard be clean-shaven was not a reasonable one in all the circumstances and that an accommodation could be made for Mr. Singh.

The second major decision was O'Malley versus Simpsons-Sears. This is again a decision of a board of inquiry. That was the case of a Seventh Day Adventist sales clerk in a ladies' wear department in Simpsons-Sears in Kitchener who, after working for Simpsons-Sears for a number of years--I think it was something like six or seven years--became a Seventh Day Adventist.

When she approached her employer about accommodating her religious needs, which involved refraining from work on Friday evenings and on Saturdays, he very quickly told her that he did not think that would be fair to the other employees, that it would cause work problems and shortages and that she should resign. She did not do so but was very rapidly fired.

3:30 p.m.

That again went to a board of inquiry under the Human Rights Code. Despite the fact that she was able to present four or five different methods by which she could have been accommodated while remaining in the employ of Simpsons-Sears Limited in Kitchener, the board felt that any of the proposals she had made would have involved too much of a hardship on Simpsons-Sears Limited, and they upheld the dismissal.

The third case was Abihisira versus Arvin Automotive of Canada Limited. It was first dealt with at a grievance proceeding, an arbitration board held by Peter G. Barton and two other members, who unanimously decided that Mr. Abihisira was justly dismissed for refusing to turn up at work on several occasions which required overtime days at his job with Arvin Automotive.

He was a torch welder, and torch welding was apparently much

in demand at the time. He was also a Jew, and after several weeks of struggling with his conscience and discussing things with his employer he finally decided he could no longer work on Saturdays even though they might be required. This was held to be a culminating incident allowing his discharge.

The first thing that was dealt with in the cases was whether under the present Human Rights Code the act of an employer in failing to accommodate an employee's religious needs was capable of coming within the definition of discrimination on the basis of religion. The boards have consistently held that it is possible that such conduct is discrimination on the basis of religion if the effect is to deny people of a certain minority faith employment opportunities.

In other words, if the policy is neutral on its face but it works as a discriminatory effect in the sense of perhaps having a general policy of overtime work on Saturday, which applies in a discriminatory way against an Orthodox Jew, then that is capable of being discrimination. But they have immediately qualified that with a reasonableness requirement. This reasonableness requirement, as it has been interpreted through the three cases, has slowly become rather nugatory.

Much of the problem stems from the fact that the issue is not at all dealt with in the code; and there was recognition in the cases that, because of that, there was a vacuum to be dealt with. So they determined that essentially they should look at the effect of the policy and then apply some sort of reasonableness test. The reasonableness test was a result of importing once more the American jurisprudence into the Ontario code. There was no real basis in law for doing this, but it seems to be a rather common practice.

In the United States the preliminary cases made a distinction between accommodation of religious needs on the basis of the code and discrimination with intent. In other words, if you wouldn't allow a person to work for you because he was a Baptist or Jew per se, that was discrimination, but anything that would require you to make some accommodation in your employment practices to a Jew, for example, was not something that they held to be within the ambit of the code. So Congress in 1967 adopted a new definition of religion which was added as an amendment to Title 7, which is the 1964 Civil Rights Act, and reads as follows:

"Religion is all aspects of religious observance and practice as well as belief unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

It is interesting to note that, in the preliminary results of the application of that sort of standard by human rights commissions in the United States, in most cases they were able to reach a satisfactory accommodation. I believe it was the Connecticut executive director of the human rights commission who said that they were able to achieve a solution in up to 80 per cent of the cases. There were some states in which the resolution

rate was less, as low as 30 per cent, depending on the particular situation.

This was all well and good until around 1975, when a case began to work its way through the American judicial system. That was Hardison versus TWA. Mr. Hardison was a stores clerk with TWA in Kansas City, Missouri. He was a Sabbatarian, and he requested that his employer accommodate him on his religious needs by allowing him to take Saturdays off. The stores clerk position involved seven days a week work, 24 hours a day, and time off was allocated on the basis of the seniority agreement.

Mr. Hardison at first went on a late-night shift, and things seemed to be working fairly well. Then he married and moved into another plant and on to a day shift. When someone went on vacation he began to experience difficulties because, of course, he was wanted to cover certain shifts and he had previously explained his need for Saturdays off. Over a period of perhaps three weeks there was some discussion and he was dismissed.

After pursuing his remedies through various commissions and things of this nature, he eventually filed suit under provisions which allowed him to do that in federal court. The district court said any kind of accommodation here would amount to an undue hardship.

When it got to the Eighth Circuit Court of Appeals, the court disagreed with that and dealt with certain of the issues in the area, saying that the mere fact that an accommodation would cost some money or that it might interfere with a collective agreement, as long as it was otherwise reasonable, was not enough of a reason to excuse an employer from his duty to accommodate under Title 7 of the code.

They held that TWA had never made a real effort to accommodate Mr. Hardison and that his moving from one plant where he was working nights to another in which he was working days was not evidence of lack of co-operation, since otherwise all employees of a particular religious faith who might need accommodation would be constantly discriminated against in transfer policies within the plant.

They found no evidence that accommodation would amount to an onerous duty on the part of TWA, considering its size and the aspects of its operations and the availability of a pool of around 200 labourers who could have performed his job. On that basis they found TWA liable for discrimination.

TWA appealed to the United States Supreme Court. The United States Supreme Court overruled the Eighth Circuit Court of Appeals seven to two, saying that anything which required an employer to make more than a de minimus effort in accommodating an employee was undue hardship under the definition in Title 7 as amended in 1967.

3:40 p.m.

There is a progression really in our own case law from the



case of Singh, which really was a very minimal accommodation--there was no need for the employee in that case to wear a security cap as opposed to a turban, and there was no real evidence that the fact that he wore a beard was going to be detrimental to the employer's operations--to the case of O'Malley, which takes note of the Hardison decision in the Supreme Court of the United States and again pretty well sets down the same de minimus test for accommodation.

As I say, it seems to have been the way that the boards of inquiry have gone to say there is a duty to accommodate but then to very quickly define it almost out of existence if it costs anything at all.

The new code, in section 4(1), changes the definition of discrimination. The current section 4 merely says, "No employer shall refuse to employ because of race, creed" and so forth; so it is very ambiguous what that means. The new definition says, "Every person has a right to equal treatment in employment without discrimination because of race, ancestry [and] creed," among other things.

Section 9c goes on to define discrimination as differentiation resulting in an exclusion, qualification or preference.

The combination of the two sections would seem to prevent any kind of accommodation of the religious needs of employees, even that of Mr. Singh, because every person has a right to this equal treatment and discrimination includes preference. Therefore, if you have discrimination including preference, how is an employer to be able to make an accommodation, even if he desires to do so, without discriminating against other people? We are back into Mr. Harrison's--I believe it was--reverse discrimination situation, and there is a real problem with it.

The code tries to do something about this by enacting section 10. Essentially, that says: "A right under Part I"--which would include religious discrimination--"is infringed where a requirement, qualification or consideration is imposed that is not a prohibited ground of discrimination but that would result in disqualifying a group of persons who are identified in common by a prohibited ground of discrimination, except where the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances..."

It can be argued that any job requirement that is at all related to the operation of the employer's business, however discretionary it may be, is reasonable and bona fide in the circumstances. It further can be argued by employers that doing anything else accommodating the religious needs of an employee discriminates against all the rest of their employees; it amounts to preferential treatment, to an unfair practice which should not be countenanced, and the code really does nothing to deal with that.

Section 14, the special programs section, once more does not deal with it, because it does nothing but allow someone to

approach the commission to propose a certain special program, which of course likely would be fairly costly and employers could be excused for taking the course of least resistance in not wanting to do that. It does not mandate them, it does not make them necessary in any way, and hence fails to deal with the situation at all. In fact, it may even make it worse than it is now.

It is my submission that this is a very difficult area, because obviously accommodation is not always going to be possible. For example, if a devotee of the Hare Krishna religion wished to wear his sarong, his bald head and no cap and no uniform in the case of a security guard situation, there is no way an employer should be required to allow that; it would just totally render his operation, with respect to that one guard, impossible.

On the other hand, in the Singh situation there is no reason why a person could not wear a turban, wear a beard and wear the uniform otherwise, and be a productive member of the employer's work force.

In similar vein, there are options available to many large employers which would allow the accommodation of Sabbatarians. In Mrs. O'Malley's case, one of the options she presented was that she be sent back to become a cashier, a position she had earlier occupied with Simpsons-Sears in Kitchener. Essentially, because of that transfer, she would have been all right because of the availability of various personnel. The difficulty was that she was in one department. A little bit of flexibility on the part of Simpsons-Sears would have, no doubt, avoided the problem.

Large institutional employers in particular should be able to make accommodations without undue hardship and should be one of the major criteria used to determine whether there is going to be undue hardship: the number of people, the size of the operation and things of that nature.

There is no way that you can really legislate a formula which is going to cover all cases fairly and which is not going to lead to some ridiculous situations.

What I propose would be the appropriate method of dealing with this is to legislate a blanket requirement of accommodation unless, and the "unless" is that on application to the human rights commission the employer was able to establish that, given the entire context of his operations, any accommodation was improper.

By doing that, there would be an onus on the employer to establish that, and the Lieutenant Governor in Council, hopefully by enacting some regulations and guidelines, could broaden or narrow the spectrum of accommodation as various cases came up.

That is something that could be dealt with administratively so as to try to keep the thing actually reasonable as opposed to putting it into a straitjacket of legislative enactment which could all too easily be rendered ineffective by an unfortunate decision because of particular facts of a case which might come up.

By enacting that sort of provision, you would also put an onus on employers to try to find a method of accommodation, or at least to demonstrate to the commission that they had done their best in looking at the situation and that in trying to seek some sort of an accommodation, given the whole circumstances, it was just impossible; that it was very expensive or something of that nature.

The flexibility of doing it by regulation, once more, would allow the officers of the commission to approach cabinet or the minister and make certain recommendations from time to time on broadening or narrowing the scope of it.

That would be the best approach to the whole area, to assuring that accommodation could be made for the broadest number of people in our society, to give them the broadest exposure to job opportunities within the province, and yet not to unduly hinder the operation of employers at the same time.

Those are my remarks on that issue. I do have some further remarks on the enforcement provisions of the new code. There has been a lot of concern and criticism raised, in particular about section 30 and the power of persons investigating complaints to enter places without warrants and things of that nature. I have to say that I agree with a lot of those concerns and find the provisions unfortunate.

In my view, a far better situation would be to allow the commission to investigate, certainly, but to investigate in the sense of being able, in the same way a litigant in a civil suit is able, to serve an appointment on the employer, or other person who has allegedly discriminated, for an examination before a special examiner in whatever judicial district he or she may reside.

3:50 p.m.

That examination should be more in the form of a cross-examination to get at the essential facts of the matter--to establish them quickly. There should be a parallel right of cross-examination for the person who allegedly has discriminated against the complainant. That would be just as quick and a lot less open to objection on the part of the general public, as denial of their rights in this overweening commission going in and grabbing records and taking them off. They would be in exactly the same position as any other civil litigant who has to answer questions in a law suit.

I think one of the aims of the Legislature in having this board of inquiry in the investigative stage has been to save time and effort. I would just like to read you something from the Singh case which I think is rather interesting in this regard. It is at page seven of the Singh decision. It is a letter from the employer, Security Investigations Services Limited, to the Minister of Labour, and it says:

"Mr. Singh's complaint was registered with your department on December 10, 1975. In the body of the complaint, Mr. Singh states that he was advised during his job interview that it was



SIS policy only to hire clean-shaven persons who did not wear turbans. Some time later Mr. Sackrule visited this office and advised us of this complaint. We informed Mr. Sackrule that the complainant had been correctly reported to him. We confirmed that it is SIS policy to hire only people who are clean-shaven and who will conform to the company uniform requirements. We asked Mr. Sackrule to state whether this was a violation of Mr. Singh's human rights, and Mr. Sackrule was unable to do so.

"Our position is simply this: If we are right, we have always been right, and if we are wrong, we have always been wrong. At no time, however, have we attempted to hide or distort our position or our policy. Your department has taken eight months to carry out an investigation to prove, not that the facts are at variance with our stated position, but that they are the same."

A preliminary investigation can be conducted very rapidly, but I do not think there would be any loss in time in getting an appointment with a special examiner, which would take maybe a week to 10 days to set up; getting parties served and having them come in with the necessary documentation; going through an hour-and-a-half- to two-hour procedure which would be a cross-examination establishing the facts. Very rapidly some determination could be made.

Another thing which I think would be of great use is that rather than having boards of inquiry, although you may ultimately decide to go that route, you might simply take a look at what you want to do with this legislation and make the particular forms of discrimination enumerated torts, and then let the lawyers at it-- the lawyers for the commission and the lawyers for the other side.

That would save a whole lot of expense as far as setting up investigations and boards of inquiry is concerned, because in many cases these things would be resolved very rapidly at a very low level between counsel for the parties, like any other civil dispute. Those issues which would need to be adjudicated would be in a fairly expeditious manner.

Mr. J. A. Taylor: Would you provide for assessment of costs?

Mr. Hebert: Yes. Against the commission. I think the commission should have the right, in the public interest, to bring suit, and it should have the right to bear the cost of an unsuccessful suit. In the same vein, an individual whose complaint has been looked at by the commission and who has received a negative response and the commission does not want to proceed should have the option of bringing suit, and should have the option then of bearing full cost himself.

I think one of the main things we should try to do is to balance things out so that it is not justice just for those who can afford it. It is a public policy matter in Ontario to see that human rights is respected. It is a public policy matter that the government is willing to enforce by having competent counsel go into the courts and do so.

Mr. J. A. Taylor: That certainly would be an improvement over the present legislation in terms of ensuring that even if there are frivolous actions at least there will be some type of reimbursement to the person who may be wrongly accused.

Mr. Hebert: As I say, as long as there are costs awarded against the commission; as long as that is part of it, just as in any other law suit, you should not have too much of a difficulty.

Mr. J. A. Taylor: Then presumably the commission would be careful in screening those cases on which to proceed.

Mr. Hebert: Yes. Once again, it is a matter of whether the issue is of enough importance that the commission should litigate it. If it is, then the risks of loss should be borne by the commission--borne by the government in the public interest. If the individual persists--if he is a vexatious litigant--he is going to suffer. If he goes to private counsel after rejection by the commission of his case, that counsel, knowing the terms of the legislation and having some idea of what has gone on before the commission, in all likelihood is going to tell him forget it, "unless you have a very large amount of money you want to waste."

Mr. R. F. Johnston: Your depth of knowledge in this field is evident from your presentation. Did you handle any of these cases that you mentioned?

Mr. Hebert: No, none at all. I have been interested in it for five or six years. I have gone through the various laws in Ontario and in the States and reviewed it. I am interested in the field in general.

Mr. Riddell: You used as an example of discrimination because of creed a Sikh who was turned down for application for a security guard. What if one were to use the example of the construction company that insisted its employees wear safety helmets? If they did not, then that employee would no longer remain in the employ of that company, and neither would the company ever consider hiring someone who was not prepared to wear a safety helmet.

Mr. Hebert: I would have to say that if the operations of the employer involved some danger to a person who did not wear a helmet, if all of the operations this particular employee might perform in the course of his job duties involved that danger, then that is exactly the sort of situation in which the commission should say accommodation is not required, because it is really not reasonable; it is too dangerous.

Mr. Riddell: What is the purpose of our policemen having uniforms where they have to wear a certain type of cap--a motorcycle cop definitely having to wear a helmet? What is the reason for that? There must be some reason they are asked to wear a special uniform, including the cap. If they are going to make special concessions for Sikhs and others, then what purpose does a uniform of any kind serve?

Mr. Hebert: That is a good question. Obviously one of

the purposes is identification and that may be very relevant to determining whether an accommodation can be made. That is my point about the Hare Krishna devotee. If he comes in with a sarong, a bald head and will not wear any form of identification that would allow the public to know that he is a policeman or something of this nature, definitely it is too much to ask an employer to accommodate under those circumstances.

However, if it is a matter that can be worked out, such as wearing a turban and a beard and otherwise wearing the standard uniform, so that he is not really that different from the average policeman who goes down the street without a cap--and many of them do--then it is the sort of thing I think employers should be required to accommodate in those circumstances.

Of course, it is a line-drawing exercise; that is why you cannot lay down any strict legislative enactment as to what is and what is not going to be appropriate. It is a matter that has to be judged on a case-to-case basis. But that is why I would like it to be a duty on the employer to do that absent of commission exemption.

4 p.m.

The commission can give all sorts of exemptions based on regulations made by the minister and/or the department in their experience dealing with the cases over time. That would give the fairest shot to the community in not having weird accommodations enforced on employees and a fair shot to the employee in trying to fit into our society and be a productive member.

In many of these cases the choices for a devout religious person are very limited. The Sabbatarian employee is an example. He is pretty well excluded from the industrial sector, from the retail sector. He may be able to get an office job but it really cuts down the scope. The question is, does it needlessly cut down the scope? And that is what the reasonableness test ought to determine on a case-to-case basis.

Mr. Renwick: I just have one more question which I think is a qualitatively different one; that is the question of the adjustment of hours. I guess my problem is with your solution; that is, how would either the commission or the Lieutenant Governor in Council ever determine regulations that would be an accommodation other than meeting a test. I take it what you are saying is that the problem with doing it in legislation would make it very rigid.

On the other hand, the problem with doing it by regulation would almost connote that you could classify businesses. Are you really going so far as to say that the only way you could do it by regulation was to regulate not each business but each individual instance that arose in relation to a particular employer?

Mr. Hebert: What I am proposing is that the government put out regulations that are really in the form of guidelines for the guidance of commission members. In particular, it should not be the average officer out on the street who makes this decision.



It should probably be a central agency either in Toronto or regionally--someone with a reasonable responsibility within the commission to make the determination.

The guidelines should suggest a fair degree of the desire on the part of the government that an accommodation be made if it is at all possible--combining that with an onus on the part of the employer to come to the commission saying: "Look, what can I do? I cannot do anything. There is just no reasonable, rational solution to this, except discharge."

Then what ought to happen is that if the commission is persuaded that is the case it should grant an exemption. And that covers that individual case. They may even grant an exemption covering all similar types of cases with that employer. But if the commission is not satisfied, the legislation stands, the requirement of accommodation stands and the employer has got to find a means of accommodation.

Mr. Chairman: Thank you very much, Mr. Hebert, for your presentation.

Mr. Renwick: If we have not already asked for it, perhaps we should get a copy of that Canadian Human Rights Commission decision on the Singh/hard-hat proceeding. I am not asking that we have it immediately. Has it been distributed?

Mr. R. F. Johnston: No. I think what you are talking about--he did not mention the new Singh case when he was talking about the old Singh one, which was to do with the hat--not the hard hat, which is the Canadian Human Rights Commission.

Mr. Renwick: Dealing with the hard-hat/Sikh person and the Canadian National Railways, which was reported within the last two weeks?

1605 follows

Mr. Chairman: Do you want it by 4:30 p.m., or is tomorrow all right?

Interjections.

Mr. Chairman: Mr. Ken Wilson.

Mr. Wilson: Mr. Chairman, members of the committee, in my brief I have made use of some fairly strong points. I have been a little critical of government, and I do not mean to offend any of you individually or personally. I feel I must make strong points, because the points I want to express are rather strong. Possibly you have not been exposed to some of the ideas I have expressed in this brief. Before I start talking on Bill 7 specifically, I would like to discuss human rights in general and related rights.

Before the emergence of governments, for example, in a small cave-man community, a person was fully justified in using violence to protect his individual and basic rights of life, liberty and property. On the other hand, he was not morally justified in

taking his neighbour's property even if he wanted charitably to give this plundered property to another neighbour who might not be as well off as he is.

Another example might be the old wild west situation in the United States where people had their basic, individual rights to look after their life, liberty and property. On the other hand, they did not have a right individually to take a neighbour's property and give it to a third, possibly poor neighbour.

Governments are supposed to be the servants of a taxpaying population; that is, civil servants are hired by taxpayers to perform those duties which the taxpayers delegate to the government.

Going back to this wild west situation, it was very common for the townspeople to hire a man called a sheriff to protect their basic individual rights. However, duty, in order to be delegated, had to be an option justifiably and morally open to the individual taxpayer. You cannot delegate a power, and these people could not delegate a power which they did not have. The sheriff certainly could not morally or in any justifiable way take property from one person and give it to somebody else, redistribute the property.

Furthermore, these individual basic rights of life, liberty and property, universally recognized except in periods of repressive dictatorial government, did not come from government. These rights are not supplied by government. They existed before government ever came into being. They came into being at least as early as the first man.

When they did originate would certainly be good grounds for discussion, but it is beside the point where they originated from. The point is that they did not originate from government. Some people, myself included, would claim these are God-given rights. Other people might say they are just natural rights that came into being when a person was born. These cannot morally be taken away by government. In fact, the only legitimate function of government is to safeguard and protect these individual rights of life, liberty and property.

In Canada today, we have so-called rights to minimum wages, welfare, medical care, guaranteed annual income, rights against discrimination and so on. My point is that these are not true rights at all. You and I cannot individually claim these rights as part of our existence at the time we were born. These so-called rights are an illegitimate creation by government.

Why are they illegitimate? They are illegitimate because the taxpayers never inherently possessed these rights at the time they were born and could therefore not delegate these rights to the government. For example, a person cannot morally hold a gun to somebody else's head. And when I use the example of a gun that is very relevant, because government passes law which is force. They hire policemen to carry out the law, and policemen wear guns.

4:10 p.m.

It is not morally right for an individual to hold a gun to someone else's head and demand he hire that individual or rent a property to him or whatever. On an individual basis, it is not morally right for an individual to do these things. Why do governments think it is morally justified for them to impose this violence when I have already explained that rights are delegated to the government by individuals?

To guarantee these imaginary rights I have mentioned--rights against discrimination and all the rest of it--governments resort to threat, violence, legal plunder, suppression of liberty and all kinds of things against the same citizens and taxpayers whose basic God-given, individual rights the governments were supposed to protect in the first place.

Here are the taxpayers or the citizens paying taxes to the government in order to protect these individual rights, and the government goes ahead and does all kinds of things, supposedly guarantees other kinds of rights which the individuals never had in the first place, thereby restricting the basic individual rights of these same people.

For example, the federal government uses violence to extract income taxes from me, to infringe on my right to property. The right of taxation means you are taking away property from an individual. It would not be so bad, I guess, if all this money was used to protect my basic God-given rights through a national defence force. However, much of this money is not used for national defence. A lot of it is used for redistribution to individuals and groups that I, as an individual taxpayer, would not support.

The provincial government uses violence to reward a few groups of people with respect to hiring, firing, rental of property and so on. The victims in this case are employers, property owners, other citizens, who pay taxes to have their individual God-given rights protected by the provincial government.

Of course, I do not want to leave anybody out. Municipal governments likewise use violence against people who pay their taxes to be protected from the violence. A good example of this is the poor fellow in Toronto who recently built a house with his own money on his own property with his own labour, but the government came along and said, "You did not have a building permit to build that house," and they tore it down, charging him the expense of tearing it down.

In general, this whole rotten system of government agencies redistributing wealth, plundering one person to give to somebody else, enforcing human rights, controlling business and so on, is indulged in by all levels of government.

Premier Davis and Prime Minister Trudeau are especially fond of this activity. I do not believe they like to do this because they foolishly think state control or socialism will improve living conditions. I think there is an ulterior motive. I believe Mr. Davis and Mr. Trudeau are not foolish people. They use this



government interference in order to gradually convert Canada into a dictatorship.

Provincially, the Ontario Human Rights Commission is a plundering agency which guarantees imaginary rights at the expense of actual and real basic rights of liberty and property. Liberty implies freedom of speech, freedom of thought, freedom of action which do not infringe on another's basic God-given rights.

Property rights include four things, holding title to the property which is your deed to a piece of real estate, use of the property, control of the property and disposition of the property. There are four elements of ownership of property there. By its very nature, a human rights commission must suppress liberty and property rights to guarantee hiring, firing and accommodation rights. This is a function government can never have a mandate to do since the individual people, the taxpayers, do not have this power individually and this power therefore cannot be delegated morally to government.

Therefore, I look with disfavour upon any human rights commission. Existing laws against assault, slander, robbery and so on exist in the Criminal Code and these are sufficient--and the magic word here is "moral"--moral restraints against infringement on individual rights.

Bill 7 in particular is another attempt in an endless flow of bills, legislation, laws, bureaucratic rules and so on, all of which do not remove or repeal government shackles from individuals. Rather, they extend control over people in business. Very seldom do I hear of a law being proposed that will take away entire branches of legislation or whatever, and leave people to do what they want and municipalities to do what they want. I never hear that.

Specifically, Bill 7 guarantees rights to employment and accommodation without discrimination. This can only be guaranteed by infringing on my rights to liberty and property. Bill 7 makes landlords and employers responsible for actions of tenants and employees. I believe that is ridiculous.

Bill 7 encourages reverse discrimination. I believe that a law, if not blind to race, colour and so on, infringes on somebody else's individual rights.

Fourth, Bill 7 allows search of any place, other than a dwelling, without due process.

These hearings on Bill 7 are nothing less than a discussion on how much further to infringe on my rights of property and liberty. It upsets me that I am obliged to come here. My time is valuable. It is a waste of time and payment of salaries to this committee through taxes just for the opportunity to try to salvage and defend my basic, God-given rights.

Without exaggeration, Canada's governments, federal, provincial and municipal, infringe on my liberty and plunder my

property much more than any other unorganized or organized criminal activity.

I guess from this you can conclude I am not in favour of Bill 7 among most legislation.

Mr. J. A. Taylor: That is the first understatement.

Mr. Wilson: I feel that discrimination is in the realm of the individual, not in the realm of the province or the federal government.

Mr. J. A. Taylor: I think it is a legitimate philosophical point of view, and some of us would certainly subscribe to the proposition that government obtains its power from the people. I think that has been said before. I suppose there is a happy medium somewhere in striking a balance. Any law takes away liberty to some degree, and we may be overlegislating. In some respects, you have to have laws to ensure freedoms as well. That is just an observation I want to make.

Mr. Renwick: I am certainly pleased to have you disclose the hidden agenda of Mr. Davis and Mr. Trudeau.

Mr. Chairman: I have no comment.

Mr. J. A. Taylor: We do not want this to become a political discussion, do we, Mr. Renwick?

Mr. Chairman: Thank you very much, Mr. Wilson, for your presentation.

The Ontario Trucking Association. I have Mr. Dean, Mr. Parke, Mr. Strauch.

Mr. Dean: Mr. Chairman, members of the committee, my name is Paul Dean. I am vice-president of Network Transport Limited and chairman of the Ontario Trucking Association's labour committee.

The Ontario Trucking Association is a voluntary trade association of for-hire and private carriers and those engaged in businesses associated with the trucking industry. The association was founded in Hamilton in 1926 and incorporated as the Automotive Transport Association of Ontario Incorporated in 1928. Today, we have over 800 for-hire carriers, 80 private carriers and 250 allied trade businesses as members. The overwhelming number of our carrier members are small enterprises operating fewer than 10 vehicles. We also have the largest fleets in the country as members.

4:20 p.m.

The members of the Ontario Trucking Association agree with the philosophy behind the Ontario Human Rights Code. However, we are concerned that, unlike the statement of rights in the present Human Rights Code, some of the prohibitions outlined in Bill 7 will have more impact on our day-to-day operations. The regulation

of interpersonal relationships by government in a code of human rights implicitly suggests subjective third-party interpretations about possible violation of aspects of the code.

While the interpretive nature of the present Human Rights Code is a fact of life, there is considerable concern within the trucking industry that some of the new proposals will unduly complicate the administration of our businesses and furthermore could result in violations of the code and subsequent charges of discrimination where no discrimination was intended.

It is for these reasons that we feel the changes to the code go beyond what is necessary and desirable in attempting to ensure the quality of working life for residents in Ontario. The following discussion touches on some of our main concerns in regard to proposed legislation found in Bill 7.

Uncertainty: Section 21(6b) provides that "the right under section 4 to equal treatment in employment is not infringed where a person refuses to employ another for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification because of the nature of the employment."

Several briefs before this committee have commented on the fact that this clause puts employers in the position of not knowing whether they might be contravening the law until a complaint is laid, after which time the human rights commission will then rule on the merit of a suggested bona fide exception to the legislation put forward by the employer.

Uncertainty is the bane of business. In its role as a promoter of economic activity, the government should do everything it can to make cause-and-effect relationships under its control as predictable as possible in order to eliminate uncertainty.

In this regard the OTA would like to suggest that the human rights commission be given a role not alluded to in Bill 7. This would be in the a priori interpretation on behalf of individual companies or industries as to what particular set of circumstances would result in a bona fide exemption under 21(6b). These decisions would then be published by the commission in the form of guidelines for other companies and individuals. Such information would be particularly useful in potential cases of discrimination where age, record of offences and some handicaps are being considered.

For example, due to the nature of our industry it is imperative that companies use every tool at their disposal to ensure safety on the road. One of these tools at present is frequently a check on the driving record of both potential and present drivers to ensure that companies do not hire or keep employed an accident waiting to happen. Over the years the industry has learned that the correlation between the record of driving offences and accidents is very strong. The industry therefore feels that this sort of check should be a bona fide exception to the prohibition of discrimination on account of record of offences.



Rather than waiting for a complaint to be made in order for this principle to be supported, we recommend that the industry be allowed to apply to the human rights commission for an exemption to the code under the circumstances stated. We foresee a formal hearing taking place where arguments could be stated and the decision pro or con published. This would then set a precedent for other companies looking to fill certain positions. There are many such conditions both in the trucking industry and others which we feel could be ruled upon before a complaint was made, thus saving considerable time and money as well as removing a significant amount of uncertainty.

While on the subject of 21(2b), we feel that the bona fide exceptions should be extended beyond hiring to promoting and firing. Using the same example as before, a deteriorating driving record should be grounds in certain instances for dismissal of a driver. The present proposal would not allow this information to be used in order to ensure a safe operation.

In conjunction with the above proposal, we suggest that section 21(1) be altered to allow for the listing of exemptions granted by the commission on application forms or job advertisements. Failure to allow this will result in a considerable waste of time and money, both by the applicant and the employer. Common sense dictates that where there is a legitimate job qualification that it be allowed to be noted in advance. We note that the Human Rights Code currently in existence has provisions for the granting of exemptions under certain circumstances providing that job advertisements list the exemption number.

Management responsibility: We feel that section 42, making certain organizations responsible for the acts of harassment or discrimination of all their employees, goes well beyond the type of control over employees that society dictates. The inference in the section is that a corporation should control the minds of its employees, for only through a form of rigid brainwashing could employers ensure that they would not run afoul of this regulation.

Surely where it is the clear and stated policy of an organization that discrimination in employment and sexual harassment are forbidden, when it is found to take place the organization should be exonerated from any culpability.

Responsibility for the actions of all employees is particularly onerous in the trucking industry where on a daily basis a large segment of employees are away from any direct supervision. While we agree that there may be some justification for making an organization responsible for its management employees, we cannot agree with the attempt to make an organization responsible for all employees.

Double jeopardy: Another concern of our members is the potential to be put in a position of double jeopardy. Many members of the trucking industry are unionized and, accordingly, have grievance procedures written into their union contracts. Many of the types of discrimination outlined in Bill 7 could result in a grievance complaint as part of the collective bargaining process.

This could end up ultimately in a costly arbitration board hearing.

As Bill 7 is presently written, the employee, after going through this procedure stemming from the collective agreement, could then lay a complaint with the human rights commission. It is our position that, as a result of a particular incident of discrimination or harassment, the employee must choose which complaint process to use and that, once the decision is made, the other avenues should be permanently closed off in regard to the particular complaint.

False complaints: The OTA is concerned that there is no allowance for penalties to complainants for false and vindictive complaints, even though we recognize that the board has the power not to hear these types of complaints. While we would not expect that such a course of action would be often followed, it should be available in those cases where it is clear from the evidence that the claim has no original grounds and was brought forward for vindictive or mischievous reasons. While such an action may be difficult to prove, the commission is involved on a day-to-day basis, making difficult subjective decisions about employers' motives. Hence analysing complainants' motives where there is a suspicion of malicious intent should not be any more difficult.

Commission procedures: Other associations and groups have expressed considerable amount of concern in regard to the scope of the procedures that the commission and inquiry boards have available to them to obtain evidence of harassment and discrimination. We do not intend to go into these matters except to register our concern as well.

Whatever the good intentions of the proposed act, if the suggested investigation and enforcement provisions are seen to take away from presently accepted rights, they will invite disrespect and contravention of the new act, thus defeating the goal of the legislation. The objectives of Bill 7 are too important to let that occur.

Other concerns: Finally, we would like to discuss a concern we have in regard to the potential to be in violation of the antidiscrimination prohibitions in the code where there is clearly no discrimination intended. While we have no solution to this dilemma, we feel mention must be made of it.

Specifically, we feel sections 10 and 13 could put employers into impossible positions. Section 10 suggests that a firm could be in violation of the act by setting certain qualifications which while in themselves are not discriminatory could unintentionally lead to a group of persons with a common identity being discriminated against. Furthermore, this qualification could have originated as a result of another piece of legislation. The recent case cited in the newspapers of the apparent violation of the rights of a Sikh on religious grounds is a perfect example of this dilemma.

While we recognize the purpose of sections 10 and 13, we

feel that the potential for trapping completely innocent employers must be checked.

4:30 p.m.

Mr. Van Horne: I am just wondering about the case of the Sikh. Which case are you referring to? We have heard of two or three.

Mr. Dean: This is the hard-hat situation. Many of our companies truck on to construction sites, where a hard hat must be worn.

Mr. Renwick: I just had one area. Amongst your various member companies, have you had any specific instances with the present human rights commission where any of your members have been subjected to complaints with respect to employment?

Mr. Dean: I do not believe so.

Mr. Strauch: I do not believe so.

Mr. Renwick: Just from observation, I am curious as to whether in your industry there is a problem with respect to women seeking employment. When you ask for an a priori interpretation, for example, would you be asking for a bona fide qualification that women were not suitable for highway transport driving?

Mr. Parke: We have quite a number of them in the industry now, and it is increasing each year.

Mr. Renwick: I take it that your association and your member companies must employ a wide range or cross-section of various groupings within society.

Mr. Parke: Very much so.

Mr. Eaton: I am more concerned with what was said about the safe driving records--

Mr. Renwick: That is one that I do not have any particular problem with. The connection is a strange one, that between record of offences and accidents. I do not think it touches upon the main one. Nobody has been able to establish a connection. But that does not alter my concern that the present provision would have to have an exception in relation to offences under the Highway Traffic Act for people who were going to be drivers. I don't see a problem in that area.

Mr. Dean: We are also concerned about the criminal element, because we do carry valuable cargo. If we hire somebody whose background we do not know, and the truck and the cargo disappear, it can be a problem also--an obvious problem.

Mr. Eaton: This basically applies to provincial offences, though, not criminal charges.

Mr. Dean: It is a combination of both.



Mr. Renwick: But, in so far as the criminal offence is concerned, only after a pardon, which is a long, drawn-out process.

Mr. Dean: Yes.

Mr. Renwick: But I can see, if you lost your truck, it would create a problem.

Mr. Parke: Especially with a cargo.

Mr. Van Horne: Do you have any problems with qualifications because of physical handicaps?

Mr. Dean: Again, I think it becomes obvious. A person applying to drive a truck has to be properly licensed. Assuming the present licensing system would allow him to drive a commercial vehicle, I do not think the industry would object to hiring a person.

Mr. Eaton: Our ministry discriminates before it gets to their stage.

Mr. Dean: A complaint might be registered against the ministry, not the trucking company. That would be a concern, of course.

Mr. Strauch: There are some interesting exceptions to that, though. The government allows a completely deaf person to get a class A licence, which is to drive a tractor-trailer, and there is no prohibition against deafness. Yet someone running a trucking company would obviously need someone with hearing, because you have got to call in to dispatch et cetera. So you may have somebody who is qualified to drive a truck, whom, I think legitimately, we should not have to hire because of that qualification. That should be another ground for not hiring.

Mr. Van Horne: The reason I asked--Mr. Brandt might be aware--the London Free Press has been covering the case of a young male who applied for a job with Canadian National Railways, and he has the handicap of parts of four fingers on one hand missing. There is a complaint in front of the Canadian Human Rights Commission and the CNR. I understand this boy is a real man; he is able to do most anything.

I am just wondering in your experience if you have had anything quite like that, wherein that type of handicap might have precluded his being employed.

Mr. Dean: We have one employee--I'm trying to recall how many fingers he has missing, but I would suggest most of one hand--who is driving long-haul with no difficulty and certainly is not being discriminated against as a result of what I wouldn't consider, quite frankly, to be a handicap. But I suppose it would be--

Mr. Eaton: I think that one in London in regard to being able to pick up boxes or something--

Mr. Van Horne: I would gather also operating some type of forklift. I'm not sure of that.

Mr. Parke: But he would have to use his hand a great deal more than just holding a steering wheel.

Mr. J. A. Taylor: A handicap is a very relative term. It depends on the particular job you are trying to do. When it comes to golf, I have one.

Mr. Van Horne: You're standing too close to the ball.

Ms. Copps: The issue of double jeopardy that you have raised was raised by a previous presentation. I believe we were going to get some more information on that from the minister. I think it was requested at that time. Will that be forthcoming before we go into clause-by-clause?

Mr. Brandt: We can do that perhaps even next week if we have time.

That's on which page of this brief?

Mr. Dean: Page four at the bottom.

Ms. Copps: Page five at the bottom.

Mr. Chairman: Right at the bottom, where it says to go on to page five.

Mr. Brandt: I'll see that you get that information.

Ms. Copps: I think it was raised by an earlier presentation, and in fact you have a situation where somebody might want to take advantage of (inaudible) or human rights commission, and it seems unfair that he tried twice for the same kind of (inaudible).

Mr. Brandt: I believe this is the first time we've had a solution which suggests that you go one route or the other. There may be a possibility of doing it.

Mr. Riddell: This is more a question for you, Mr. Chairman. Can we as a committee expect to receive any amendments that the minister may well be contemplating before we get into a clause-by-clause discussion on the bill? Do you know?

Mr. Chairman: I don't know. I would think you would have to ask the minister.

Mr. Brandt: I don't know his intentions except that on a couple of points, as you well know, he has already come before the committee and made clarifications, particularly with respect to the so-called search and seizure and the other aspect of another person being in attendance during questioning. Those two areas he has already clarified.

Mr. Riddell: I think it would be helpful and expedient,

though, if the minister could provide us with amendments before we actually start into the clause-by-clause.

Mr. Chairman: I think we would have to ask him. I think the minister did indicate that he would like to table those before we get into clause-by-clause. That's off the top of my head, and we may--

Mr. Eaton: We have some time--

Mr. Chairman: He may not have said that, but I think maybe we should ask him directly.

Mr. Eaton: If we have some time between the time the committee finishes receiving presentations and the time we start clause-by-clause, it has been sort of common courtesy that before the start of clause-by-clause--sometimes it's only two or three days--the minister provides those the list of amendments that he will propose before the committee. Usually the opposition does the same thing--tables its list ahead of time.

Mr. J. A. Taylor: Surely that's only reasonable. You know, if you're going to examine a bill you have it for a reasonable period before you examine it so that you can review it yourself. And I would think that if--

Mr. Chairman: We can come back to this. Is this leading to a question of the gentlemen?

Mr. Riddell: No (inaudible).

Mr. Chairman: Gentlemen, thank you very much for a very interesting presentation.

Ms. Copps: Since that issue was raised, from having spoken with Mr. Stone earlier on--we were sort of proposing amendments--my understanding is that you would usually table major amendments in writing but that minor amendments can be made as you go along, because there are probably going to be many areas where there might be a word or two that we would like to see deleted or added.

Mr. Chairman: The interesting thing is, Sheila, the chairman has never been through it before either; so it probably will be lots of fun.

Interjections.

Mr. Chairman: Unless there is any business, that concludes the presentations. We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 4:40 p.m.





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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, OCTOBER 1, 1981

Morning sitting



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Taylor, J. A. (Prince Edward-Lennox PC) for Mr. Johnson  
Van Horne, R. G. (London North L) for Mr. Eakins

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant to the Minister

Witnesses:

Miceli, A. M., Private Citizen

Palmer, J., Private Citizen

Roach, C., on behalf of Kopyto, H., both Private Citizens

From the Sikh Community:

Sehmi, Miss T

Sehmi, Mr,

From the Sub-Committee on Aging (Mayor's Task Force for the Disabled and Elderly);

Bobrovskis, M.

Ceresne, D., Planning and Development

St. Lawrence, I., Chairperson

From the New Democratic Party Association, Ward 6  
Blank, A.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, October 1, 1981

The committee met at 10:13 a.m. in room No. 151.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I believe I can recognize a quorum. We have a very busy day; we have six on before lunch. I will mention, and maybe I should mention it again later, that next Tuesday counsel cannot be here until 3:30. The clerk is trying to see if we can reverse the Quebec human rights from the afternoon to the morning and counsel in the afternoon. Perhaps before the day is out, I will have more news on next Tuesday's schedule.

Mr. Miceli.

Mr. Miceli: I apologize first of all for the fact that I did not understand that the brief was supposed to be restricted to one page. I have three pages here. I hope you will bear with me, and I hope it will be profitable to all of us.

Mr. Chairman: I don't know where that came from, that it had to be restricted to one page.

Mr. Renwick: It's a good idea.

Mr. J. A. Taylor: It's a rule that has been honoured more in the breach.

Mr. Miceli: This is my brief to the members of the committee on resources development.

Gentlemen, first of all, I would like to express my thanks for the opportunity to appear before this committee and to outline my views as a Canadian citizen on the revision of the Human Rights Code of Ontario.

Second, I would like to make it clear from the very beginning that I was born in Canada of immigrant Italian parents and that I am proud to be a Canadian. As such, I am also very concerned about what may be termed as a general lack of true patriotic feelings and love for our country and for our fellow Canadians across Canada from the Atlantic to the Pacific.

Third, I would like to indicate that I have had varied experiences throughout my life with people of several different nationalities, races and creeds and that I strongly uphold the dignity of the human being of whatever race, creed or nationality. I am concerned for the need and the right of all human beings to be treated in a just manner.

Further, I support a Human Rights Code that deals with and protects the basic human rights, and here perhaps is where the fundamental problems arise. Just what are these basic human rights and what is the distinction between basic human rights and acquired or legal rights that could properly apply to the citizens of a particular sovereign country or nation?

I believe too that one should be ready to accept the concept that there exists a proper and just discrimination as well as an improper and unjust discrimination. This should be seriously considered in setting up the code.

Another term that is misused and causes a great deal of confusion and misunderstanding is equality when dealing with social or human matters. The term "equality" has true and real meaning only in mathematics; that is, when one is dealing with numbers. In my view, and in the view of many others, there is really no such thing as equality in human affairs. Hardly anything at all in nature is equal. Natural and human rights do exist and should be exercised and applied fairly and justly; to apply them equally makes no sense. Again, opportunity is rarely if ever equal but should be provided in a fair and just manner. In fact, in order to be fair and just it is often necessary to treat human beings unequally, so to speak, or in other words, in different ways.

Thus, I am suggesting that the terms "equality," "equal opportunity" and "equal treatment" be avoided in the Human Rights Code and replaced by other terms and expressions which clarify and give real significance to the concepts of human rights and human justice.

If I may, I would like to bring to your attention my more direct concern regarding the code, and that is the factor of nationality or citizenship, which is the word used in the revised code. On this point, may I read my letter of June 3, 1981, addressed to the committee. It is attachment number one.

"Dear Sirs: Following your invitation for written submissions on Bill 7, the Human Rights Code, 1981, I have the following comments. In accordance with the present Ontario Human Rights Code, it is prohibited to discriminate against a non-Canadian citizen (that is, a national of another country) in regard to employment et cetera.

"Let me quote: 'The Ontario Human Rights Code prohibits discrimination on the basis of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin. This applies to employment, housing, public accommodation, services, signs and notices.'

10:20 a.m.

"There are certainly instances in which one could argue that it would be just to discriminate on the basis of creed, age and sex. For example, it would be just and reasonable to hire only Catholics as teachers in the Catholic school system of Ontario. I think you should consider these areas in the revision of the code.

"However, in regard to nationality it is really difficult to understand the logic behind considering a person of foreign citizenship (that is, a non-Canadian) having the same rights as a Canadian citizen in Canada. This to me is against common sense and should be eliminated from the code. I doubt that there is any other state in the world who gives foreigners the same rights as citizens. I suggest that this matter be given serious consideration in the revision of the code.

"I would appreciate it if you would provide me with the reasoning and the logic for giving noncitizens the same rights as Canadian citizens in the old or present code on human rights."

On following up on this matter, I was not able to get an explanation--that is, a good explanation--on why a national or citizen of another country should have the same rights as a Canadian citizen in Canada. Not being satisfied, I took every opportunity to ask my friends, acquaintances, neighbours and strangers, citizens and noncitizens, old and young, of different races and creeds--a total of 30 to 40 people or more--whether a national of another country should have the same rights in Canada as a Canadian citizen, for example, regarding employment.

All of them, with one exception, answered in the negative. Indeed, they thought it ridiculous that the government should even consider such a right. Are all of these people intellectually naïve and have no sense of human justice and charity towards non-Canadians? Of course not. The one exception replied that, "If you invited a person to your home, he should have the same rights as your own family." Gentlemen, it seems to me that this reply is so absurd that there is no need for any comment.

Another person, an immigrant and a Canadian citizen for over 25 years, pointed out that for some positions, both in government and in private industry, not only should Canadian citizenship be a requirement but also the incumbent should be born in Canada and have lived most of his life in Canada. I do not see how anyone could disagree with this view.

In this connection it is interesting to refer to a news item, which was reported both on radio and in the newspaper on Saturday, August 29, 1981, to the effect that Australia was ready to hire US air traffic controllers who were dismissed from their jobs provided they wait two years and become Australian citizens. Apparently Australia does not consider a noncitizen to have the same rights as a citizen.

I refer you also to the Fort Frances case where a teacher, a Canadian citizen, was replaced by an American citizen living in Minnesota. This was an application of the so-called equal rights provision in the Ontario Human Rights Code, but it hardly seems fair and just to the Canadian citizen, a resident of Fort Frances. The details of the case were made known by the Toronto Star, and I would like to quote from one of the editorials.

"Leaving aside technical details of the Fort Frances case, surely the question of residence is different from that of national origin or race. A country has the right to give priority



to those who have cast their lots with that country by being residents and members of that community."

I would like to add here a personal note and say that citizenship should also be a positive consideration.

To finalize my presentation, I can do no better than quote again from a Toronto Star editorial of June 15, 1981, entitled "Fix laws in rights code."

"The proposed code also ventures into unnecessary and undesirable territory when it flatly prohibits discrimination against people who do not have Canadian citizenship. It permits such discrimination only in very limited instances where such discrimination is specifically required by law or is intended to foster participation in cultural, educational, trade union or athletic activities by Canadians.

"There obviously should be no discrimination on the basis of ethnic or national origin, but citizenship is a different matter. It is, open after, all to anyone who has been in this country for three years and who fulfils certain basic requirements."

I suggest that the committee reconsider very seriously the matter of giving to a non-Canadian the same rights that are given to a Canadian citizen. It is a matter of providing fairness and justice to a Canadian citizen and, accordingly, the terms "national" or "citizenship" as they now stand should be deleted in the various clauses of Part I, entitled "Freedom from Discrimination," in Bill 7.

Mr. Chairman: Thank you very much, Mr. Miceli. Are there any questions?

Mr. Eaton: One question. You did not mention in there anywhere landed immigrant status. Do you consider that at all some place in between the situation where we had an American over here who was not a landed immigrant?

Mr. Miceli: The American citizen in the Fort Frances case?

Mr. Eaton: Yes.

Mr. Miceli: He was not a landed immigrant. He lived in the United States and he came to work in Fort Frances.

Mr. Eaton: Would you give any preference to a landed immigrant?

Mr. Miceli: No preference to a landed immigrant. I think a landed immigrant is a person who is coming to Canada as an immigrant, intends to become a Canadian citizen, intends to participate in our society and--

Mr. Eaton: You would put him in a different category from the American who had come across in that case.

Mr. Miceli: A little different, yes, but citizenship is an important basis requirement even for a landed immigrant when it comes to certain specific instances. I am not saying you should not give a job to a landed immigrant. I am saying you must not discriminate and cast aside the Canadian citizen when he is applying for a job at the same time as, say, a landed immigrant or, in this case I am referring to, a person who was not a Canadian at all.

Mr. J. A. Taylor: Could you clarify that? I was of the impression that there was no longer landed immigrant status, that there had been some change at the federal level in regard to immigration. Is there something to that?

Mr. Renwick: If I can respond to it, the Charter of Rights, for example, which is part of the constitutional package which in the forefront of the news these days, contains provisions relating to landed immigrants, and that term is still applicable to anybody who is lawfully admitted to Canada but for at least a three-year period is not a citizen of the country and cannot become a citizen of the country until the expiration of three years.

Mr. J. A. Taylor: I had heard there was some change in the--

Mr. Renwick: Not that I am aware of.

Mr. J. A. Taylor: That's fine. If this Charter of Rights is proceeded with, would that not have a bearing on the concern that has been raised today?

Mr. Renwick: I am glad Mr. Miceli has raised this question, but I took it that what we were saying in the code--and perhaps Mr. Brandt could comment on it--is that we in Ontario do not have any control over who is lawfully admitted to Canada or what the conditions are, because that is the federal immigration law, but that, once a person is lawfully in Canada either as a Canadian citizen, as a landed immigrant or, as this person must have been, a person who had some authority to work in Canada, which is a federal matter--I took it that, once you are here lawfully and entitled to work, we should not make any distinctions between whether you are here on temporary permit authorizing you to work, as the teacher obviously was, or a landed immigrant or a Canadian citizen. That was the way I had seen it until the way you have phrased it.

10:30 a.m.

Mr. Miceli: I can tell you, the very first reaction of the people I have talked to about this is this: "What's wrong with that? What's wrong with that if they are citizens?" What they are thinking of when I mention nationality is national origin, and national origin is another matter. We are talking about nationality. If these qualifications the members are bringing up here are important, they should be very clearly stated in the code. That is why I am concerned about such terms as "national" being included in that particular section.

For example, in the paper a few days ago regarding the constitution, they quoted a certain section of the Charter of Rights, the amendment to the constitution, and they did not include "national." "National" was not in there, as I read it in the paper. But we have it here in the Ontario code. In other words, that says to me as an ordinary citizen that you cannot discriminate, and "discriminate" can have good meanings and a good procedure, between a Canadian citizen and a non-Canadian citizen.

If I may proceed further to indicate the serious complications of this, in effect what this is saying to me and to other ordinary citizens is that a citizen of England, a citizen of France, a citizen of Poland, a citizen of the United States, a citizen of China--a national of another country--can come here to Canada and, if he applies for a job along with another Canadian who is a black, who is a Chinese or who is a Pakistani, the employer must give equal consideration to the person who is a noncitizen.

I think the black or the Chinese or the Pakistani or the Italian, or whoever, if he is in Canada and he is a Canadian citizen and he is qualified for the job, should be given the job. The person who is not a Canadian at all should not be given consideration. I think that is just discrimination. To give that person the job in place of this black or in place of this Italian or Chinese because the man is perhaps a little more qualified would be a serious breach of human rights, if you would ask me.

Mr. J. A. Taylor: I think, Mr. Miceli, you make an excellent point. It leads to the further question of what is citizenship all about? Are there some incidents of citizenship that bestows some sort of benefit on possessing that? If it does, what are they?

Mr. Miceli: As a matter of fact, the people I talked to and explained this matter to said: "If you do not have to be a Canadian, what is the purpose of being a Canadian citizen? When the time comes for us to fight for our country, what are you going to do then?"

Mr. J. A. Taylor: Equal opportunity.

Mr. Brandt: Everybody gets a fair chance.

Mr. Miceli: I said in my brief that I doubt very much if there are any other countries in the world which have done what we apparently have done in our code. Are there?

Mr. Chairman: I do not know. I am not so sure we are here to try to research an answer to that today. You are certainly giving us that direction.

Mr. R. J. Johnston: Just a few comments: We have a number of anomalies right now in present practice. If you want to work for the Canadian government, you basically have to be a citizen. When I was working for the federal government on contract and we were going to become public servants, there were two people



who were landed immigrants, American citizens, who were not eligible for positions.

If you look at our voting practice in Ontario, as compared with federal elections, British subjects have an unnatural--in my view--preference in terms of our voting structure. There are any number of discriminatory practices in favour of citizens and specialized landed immigrants that are already part of our traditions.

In this case I am totally in favour of protection for those people, for any landed immigrant. I do not accept your arguments at all, I am afraid, in terms of your presentation today. I would like to see all those anomalies cleared up. I think there have to be advantages to citizenship, and one of them is the right to vote. I would like to see that changed in Ontario.

Mr. Miceli: If you do not feel there is anything to my arguments, can you give me some logic behind your position?

Mr. R. J. Johnston: Certainly. The same logic as Mr. Renwick's. The person who is admitted legally into Canada, I think, deserves the same kind of protection as anybody else.

Mr. Miceli: You are saying that is your opinion. But what is the basic logic behind your opinion?

Mr. R. J. Johnston: By allowing them to enter under federal statute you are giving them the right to be protected.

Mr. Miceli: You can give a person of foreign citizenship certain privileges, if you like, when he comes to Canada; but to classify those as a basic right that he already has--and he is not a Canadian citizen--seems to me a distortion of the terminology and meaning and significance of these words.

Mr. R. J. Johnston: I disagree.

Mr. Miceli: You are concerned particularly with a landed immigrant, but this code does not specify landed immigrant. It says "national," and that implies a citizen of another country, does it not?

Mr. Chairman: Sir, it is not Mr. Johnston's role here today to convince you. It is your role to convince us. I want to allow that input.

Mr. Miceli: Whatever goes into the code, certainly there should be some basic logic that can be presented to a person who objects to it that is justifiable. If it is a personal opinion, then one's opinion is just as good as another and you have chaos. You must have logic behind it, it seems to me.

Mr. Riddell: Like my friend on the other side, I would be inclined to agree with you. On the other hand, to carry it to its extreme, to use the example of the Boat People, who were sponsored into this country by churches, if they were to be discriminated against--again, to carry it to its extreme--it may

well be that those people would never get jobs or would never find accommodation. So what are you going to do in that case? It was Canadian citizens, it was the membership of the various churches that agreed to bring these people over to this country.

Mr. Miceli: That is fine. You can always provide privileges because these people are human beings. But to put it under the classification of a right does not seem to me to be correct.

If a university wants to hire--and they have and they do--a very noted, famous professor of physics who is a national of another country, there is good justification--not just an opinion but good justification--to say that we would like to have that professor on our faculty as a professor. This would be a privilege granted to him to come here and be a professor. It is certainly not his right to come.

10:40 a.m.

The Boat People or whoever--this is what we are talking about when we say human rights; it is human dignity--certainly we should treat these people as human beings; we want to help them. But that does not mean that the Canadian citizen must be cast aside and that we should treat the national of another country in the same way or to give them preferences. We must distinguish between those areas.

If the code does not distinguish between them, then we are going to run into many legal complications and arguments and people with opinions and so on and forth. There will be even riots over the thing if the code is not clear and presumably fair and just, considering the fact that we are dealing with human beings.

Mr. Riddell: Like everything else, there are two sides to your argument, and it is something I guess we are going to have to grapple with in the committee.

Mr. Lane: I do not want to belabour this thing, because it has already been said, but I do think you have raised some pretty good points this morning.

While I cannot agree with you totally on everything you have said, I think that if the person is so attracted to Canada from another country that he wants to immigrate and live here for three years, the least he can do is apply for citizenship. I think there should be some really good reason why he did not after three years if he wants to compete with the Canadian for a position.

I think the landed immigrant or the person of whom Mr. Riddell makes mention is a special consideration, and that can be handled; but after three years, if they have not made their application, I think there should be some good reason why they have not if they are going to be competitive in the labour market with our own people.

Mr. Miceli: Once again, you are narrowing it down to landed immigrants; the statement in the code says "national," and

that means a person can just come into the country and, on the basis of the code, he has the same rights as a Canadian citizen.

Mr. Brandt: I think the point has been well made that he must come into the country legally.

Mr. Miceli: Certainly. If he does not come in legally, none of these things will apply to him.

Mr. Brandt: There is another situation I would like to cite which has not been brought up yet. There are certain very highly specialized skills that Canada, over a long period of time, has been attempting to attract from other countries. I think in my own case, in my own riding, of the petrochemical industry, as an example, where we have been recruiting for some long number of years in England to bring people over to Canada who are petrochemical chemists or engineers and this kind of thing. To try to get that kind of person over here, recognizing that he would be a landed immigrant and would have to wait three years, and then tell him that he would be subjected to discriminatory practices when you are trying to entice him into the country, I think would be an extremely difficult anomaly to balance off.

Mr. Miceli: Absolutely, and I agree with you; but once again this is not discriminating against the Canadian citizen, particularly because there are not any Canadian citizens really qualified and available for these positions. The best thing that Canada can do is to try to attract some people from some other countries, and in that case the situation becomes a privilege, not a right, in my mind.

I think we are in agreement there, that it would constitute a privilege for these people to come here and work in Canada; and the Canadian government or the Ontario government can certainly go away from the regulations or codes and grant privileges in certain cases which are beneficial to our country and to our citizens.

Once again, that is not the point I am stressing in here. I am stressing the very basic fact that it says in the code that a national of another country has the same rights in Canada as a Canadian citizen. That is what I read, and I say it should be eliminated.

Mr. Chairman: Are there any other questions arising out of the presentation? If not, thank you, Mr. Miceli, for appearing before us this morning. I think we understand what you are telling us

Mr. Miceli: Thank you very much.

Mr. Chairman: Mr. Roach, I understand you are speaking on behalf of Mr. Kopyto.

Mr. Roach: Thank you, Mr. Chairman, and members of the committee.

Mr. Kopyto is a human rights lawyer who was supposed to be here this morning, but he is in Ottawa. He has asked me to make



some points for him; these points we have discussed, and I present them all with my own concurrence as to their reasonableness.

I myself am a lawyer in the field of civil rights, and I have been so engaged for about 19 years. More particularly, I am also in the field of international human rights, belonging to international human rights organizations, and from time to time I have had occasion to attend human rights conferences in the US, in Geneva, Switzerland, and so forth, to make presentations of different kinds.

The presentation that we are making here is brief and does not raise any really substantial quarrels, or very substantial alterations to the bill, which is indeed quite a great improvement over the present bill.

The points that we have put down here could best be understood by referring to the bill itself.

In Part I of the bill, there is one comment we made, and that is that there should be a catch-all provision prohibiting discrimination because of any qualification that is not reasonably related to the situation in consideration. That kind of catch-all prohibition would have the effect of prohibiting discrimination on the basis of social class, sexual orientation or other grounds that may be unrelated to qualifications for accommodation, services, employment, et cetera.

It does happen that, many times, we cannot prove the discrimination that is involved, and we find that there is a discrimination on some other basis that is not specifically prohibited, such as, for example, the fact that the person is not pretty enough for the job, or too ugly to hold a job, or some other irrelevant reason. Being pretty enough, or being too ugly, might be relevant to a particular kind of job, and it should be allowable that people should discriminate on considerations where they are applicable. So this does not take into consideration any kind of absolute equal treatment irrespective of the considerations.

The other point that we bring up here is that, in the first section, where you speak about services, we should include there law enforcement and the treatment of individuals by official inspectors et cetera. For example, I was engaged two years ago in a situation where there were mass deportations against domestics from Jamaica, and it became clear that there was some discrimination, to us, who were faced with the situation of these mass deportations. Over 56 of them were deported in 1976. When we went to the court, however, the argument, which was initially sustained by the federal court, was that this is not goods, services or accommodation, that what we have here is just the enforcement of law.

10:50 a.m.

If the law is enforced in this uneven way, really none of these categories attaches to that kind of situation. Eventually we were able to prevail over that argument, but not without the

intervention of administration and the minister himself. This is why we say services, goods and facilities should be joined by law enforcement.

With respect to Part II, the definition of discrimination is stated in section 9c as meaning "differentiation resulting in an exclusion, qualification or preference." Sometimes it's difficult to prove that discrimination actually resulted in an exclusion, qualification or preference; for example, racial harassment. It has been a common experience that name calling is a kind of thing that goes on, racial slurring and so forth, which could be covered in other parts of the code. But so far as discrimination is concerned it's not covered. Suppose name calling does not result in an exclusion, qualification or preference; then you must say it's not discrimination. That is the reason we submit that harassment should be a consideration under this definition.

With respect to section 15, which deals with citizenship, the position we take is that there are situations where Canadian citizenship is a valid requirement, qualification or consideration and there are situations where Canadian citizenship is not a valid requirement. In those cases where citizenship proves to be a valid requirement, then one would not have much difficulty. What are those situations? They must be very few. They couldn't be the ordinary kinds of jobs that people could pursue.

Some states of the United States have had limitations of citizenship for certain kinds of professions or to be licensed. Those cases have now been dealt with by the US Supreme Court which says in one particular case that a state couldn't prevent a person from practising the profession of law because the person was not a US citizen.

There are some international documents, for example, the International Convention on the Elimination of all Forms of Racial Discrimination, which is a convention passed by the United Nations General Assembly in 1965. That does permit the differentiation based on citizenship because in article 1(2) it says, "The convention does not apply to distinctions, exclusions, restrictions of preferences made by a state party to the convention between citizens and noncitizens."

There was some discussion as to whether landed immigrant still applies. It does still apply in a sense. They now use a different expression in the new act, which is effective since 1978. They say permanent resident.

Mr. J. A. Taylor: So that expression has now been substituted.

Mr. Roach: In the cases and in the courts. But, generally speaking, the expression is the same; it means the same.

Mr. J. A. Taylor: The expression is different, but the substance is the same.

Mr. Roach: The substance is the same; so the concept still remains. I might just point out too that Canadian

citizenship was only made fact in 1946. It's not a very old concept, and there are persons born in Canada who in a formal sense are not Canadian citizens, like status Indians.

It is also noteworthy, now that many Commonwealth citizens who were British subjects have come to Canada as immigrants, that there has been a change in the entitlements of British subjects, who traditionally were able to come to Canada and immediately, without further qualifications, to get into the services--the armed forces, the civil service, et cetera--and to run for political appointment. That has been changed now.

With respect to those organizations described in sections 18(2) and 21(6), special organizations such as organizations dealing with people of a particular religious faith and so forth, there is every reason that they should be allowed to discriminate in the hiring of staff and so forth on particular grounds that otherwise would be prohibited. We must agree with the code in so far as that is concerned. The question is, however, should organizations receiving public assistance be allowed to discriminate? The experience in some of the states in the United States is that if an organization receives public assistance it's not allowed to discriminate on any of the other bases that would be otherwise prohibited.

With respect to those provisions in sections 19(1) and 21(6c) of the bill which deal with the right of a person to discriminate with respect to who handles him, such as his private nurse, who works in his home or who shares his home with him as a tenant using common facilities, it is certainly our feeling that at the present time the general populace accepts that kind of rationale for discriminating. But the question is, should those persons who have the leeway to discriminate in that fashion be allowed to advertise publicly; for example, "We are looking for a Chinese nursemaid" or something of that nature? Our feeling is that advertising that can contravene sections 2, 4 or any of the sections in Part I should not be allowed.

Section 23(1) is a very progressive section. That section says that inherent in every government there is the provision that there should be no contravention of section 4, and that a contract is voidable if the party does engage in any infringement of that particular section. We wonder why it was not broadened to include any contravention of any of the freedoms that are guaranteed under Part I; just section 4 is mentioned.

Without elaborating, you will see that the implications of not including the other sections are very far-reaching indeed. They might be caught by some other sections, but why don't we have a broad prohibition of companies doing business with the government that prevents them from infringing any of the provisions of the Human Rights Code and specifically any of the provisions of Part I?

With respect to Part III, we point out that commission members should be appointed or elected by an all-party committee of the Legislature to ensure greater independence from government. And there should be some guarantee made so that there should be



adequate funding. We have heard time and time again that the cases cannot be all investigated because there is a lack of staff, and that boards of commissions have been pending proceedings for long periods because of lack of staff and the volume. One effective way of crippling the operation is to not provide the commission with adequate funding. There should be some legislative guarantees of that funding.

11 a.m.

With respect to the section that a number of people have been very concerned about, dealing with fundamental human rights of search and seizure and so forth, one thing we comment on is the provision that a person should answer questions and so forth certainly cannot mean that a person must answer questions that would cause self-incrimination. That would be an oppressive kind of situation.

However, with respect to the other elements of that, we have less difficulty than some people have. While, let us say, section 29(3a) in isolation may look to be such a wide power that is capable of oppressive use, it has to be borne in mind that the kinds of mechanisms used to enforce human rights legislation should equate to the general powers that are given for policing other kinds of rights and other kinds of infringements of laws. If we find that there is widespread power in various acts for enforcement of various other bits of legislation that have similar provisions, there is no rationale that the human rights legislation should not have the same kind of power for enforcement.

We have had tremendous difficulties in getting papers. I was involved in a case where a police officer allegedly was dismissed wrongfully. We could not get the man's own file. I am saying "we" --I acted for the man, but the human rights commission could not get the papers necessary. It took 18 months before we were eventually able to call a commission and go to the divisional court and have the police commission come up with the files. It was a source of tremendous delay and great inconvenience in proceeding with the termination of the matter.

If I may move on to the parties to a board proceeding, the complainant, as everyone else--the respondent certainly has those rights under the Statutory Powers Procedure Act, which is incorporated by reference to these proceedings--should have a right to his own counsel at his own expense in addition to commission counsel. That is the practice and tradition of boards in Ontario at the present time. But there is no legislative authority for it; it has just been allowed by the various board or commission members. One wonders, if they said, "No. Where is your authority?" what would happen then.

There are two more points which we believe to be quite important. One is that every person should have an effective remedy and protection against discrimination suffered on grounds not reasonably related to proper qualification, and he should be able to pursue this right in the civil courts as an alternative procedure.

I am sure the Supreme Court decision in Bhadauria was raised; if it wasn't, I would be very surprised. It seems as though the courts are now saying the human rights law, the codes and commissions are the totality of your remedy; there is no remedy outside of the human rights provisions. I may be putting it a little more broadly, but substantially it is like that.

It is not declared that there is any right to sue for racial discrimination, discrimination on the basis of sex or discrimination on any other basis. It has not been held in any courts to the present time, subject to various exceptions in the Commonwealth jurisdictions where you can sue for, let us say, discrimination that causes you physical harm.

In a particular case we had in the Ontario Supreme Court just recently with a parking control officer called Aziz, it was said that he could not sue his employers for the treatment they were giving him; he had to go to the human rights commission. But he had been to the human rights commission and they said that they would not convene a board; so he was left without any remedy.

That is quite a remarkable situation where somebody is left without a remedy, without being able to bring his complaint to some kind of tribunal. If the human rights commission will not take a case forward, a person should have the right to bring a civil action at his own expense. But that cannot be so unless the act itself says the person has that right, based on the Bhadauria decision in the Supreme Court.

The final point here is that all propaganda and organizations based on ideas of racial superiority, justifying or promoting racial discrimination in any form, must be prosecuted and outlawed. We have heard time and time again that nothing can be done with respect to persons who propagate ideas of racial superiority, promote racial hatred and so forth. We have heard that we can't make any laws and so forth. I would just like to point out to you the United Nations declaration on the elimination of all forms of racial discrimination, dated November 20, 1963. This is a general assembly document, which says in article 9(1):

"All propaganda and organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned."

Article 9(3) says:

"In order to put into effect the purposes and principles of the present declaration, all states shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite racial discrimination or incite or use violence for purposes of discrimination based on race, colour or ethnic origin."

That concludes the points we have on this bill, Mr. Chairman.

Mr. Riddell: Pertaining to citizenship, you heard the previous presentation, and you are pretty involved in civil

liberties, as you indicated at the beginning of your presentation. Are you aware of other countries that do permit discrimination on the basis of noncitizenship, as he suggested?

Mr. Roach: Oh, yes. There are other countries that do permit it. In fact, there are only two countries that I know of right off the top of my head that would allow a person who is admitted legally to have all the rights of a person born in that country. If you are Jewish and go to Israel as an immigrant, you have full citizenship immediately as well as all the rights of anyone else, absolutely. You can run for any kind of political office.

I know too that in some of the Socialist countries, once you are permitted to be a permanent resident there, you have all the rights and all the obligations, too, that accompany that status. So that is the situation.

11:10 a.m.

But in most the western countries there are many different categories of persons who are legal residents. In some there are five or six different categories, and that creates a lot of difficulties, because you have second-class citizenship and second-class treatment.

Mr. Riddell: What are your own personal views? Do you think that if a person comes into this country legally that person should then fall within this bill--in other words, that there should be no discrimination against that person regardless of whether or not he is a citizen of the country?

Mr. Roach: So far as certain things are concerned. What we said is, "If citizenship is a valid and reasonable requirement it should pertain; if it's not it should not pertain." For example, in some of the provinces they say, "You can't get a government grant of land or you cannot hold certain shares in certain kinds of media, corporations and so forth"--you can't do a number of things unless you are citizen. In some of those cases there could be valid reasons, but in many cases there are no valid reasons.

The federal government, for example, says, "You should be a citizen to have a job." Still these very governments are getting people on contract who work with Office Overload and other people like that to work, and you have persons doing janitorial services, all kinds of services that would otherwise be government services, on contract, and they circumvent it in that way.

In the province of British Columbia not very long ago a man who was a road worker, a German immigrant, got his job and later was fired because he was not a citizen. He was working with the BC Department of Highways. It doesn't seem that citizenship should be a valid requirement for that type of situation.

With respect to federal laws it is a fact that criminal law applies, for example, and all the protections under the bill of rights protect persons who come into the country. If you come from



Detroit to Toronto and you held up a bank, you have all the guarantees and you are treated in the same way as a citizen would be who held up a bank; you have the same protections of the bill of rights. But that doesn't apply, as you know, to provincial matters.

Mr. Riddell: One other point: I wasn't aware that there was anything in the bill that would prohibit a person from taking a matter of discrimination to the courts. Maybe there is, but I would think that any person's recourse would be to go to the court if he weren't satisfied with the treatment received from the human rights commission. Is there something in the bill that you suspect would prevent a person from taking a matter to court?

Mr. Roach: There is nothing in the bill that prevents a person, just reading it like that. But besides the bill you have other considerations, and those would be the embellishments and refinements made by the courts that extend the operation and meaning of what's here. So that is judge-made law. Right now we have judge-made law in two cases which say that you cannot take a matter to the courts directly; even if you can prove discrimination on the basis of race or sex you cannot go directly to the courts.

This was the case of Pushba Bhadauria, who was a mathematics teacher trying to get a job with Seneca College. She was well qualified and she made seven applications. They hired people with fewer qualifications and they never called her for an interview. She took her case to court, saying that they could not properly deal with her case. The court said, "Yes, she could proceed in Ontario." This is what the Court of Appeal said.

But Seneca College appealed to the Supreme Court, and the Supreme Court came down with a decision three months ago that said: "You have to go to the human rights commission. You cannot sue for this right." So actually there is no tort; there is no actionable wrong on the basis of discrimination in this province. So it's all now centred in the human rights commission unless the new proposed code states that this does not bar anybody's rights, that it does not take away any right that does exist.

Mr. Kopyto tells me that the BC Human Rights Code specifically says it is an actionable tort to discriminate on any prohibited ground. It gives people that right if they are not satisfied or if the human rights commission says, "We think you are frivolous." If they can go that way to court on their own, they will be faced with all the expenses, they will be faced with the costs if they don't win and they will be faced in some cases with security for costs--that is, putting up money--if they are determined enough. This could be a way to take the pressure off the human rights commission in cases where they could otherwise be criticized as being the sole recourse which is doing nothing.

Mr. Chairman: Legislative research has prepared some documentation on that case and the implications of the Supreme Court ruling.

Ms. Madisso: Which you have already (inaudible).

Mr. Riddell: Maybe Mr. Brandt could answer this question: Let's say I was discriminated against and I didn't have very much faith that the human rights commission would do anything for me. Can I not bypass the human rights commission and put it immediately into the courts if I am prepared to solicit the services of a lawyer and whatever?

Mr. Brandt: I think you'd have to go to the commission first, but I don't think there is anything in the code that prohibits you from going to the courts or to the Ombudsman, for that matter.

Mr. Riddell: But you've got to use the commission as a first step.

Ms. Copps: There is a court judgement which states that you cannot go to the court, and that's the judgement that he is referring to, Bhadauria versus Seneca College. Mrs. Bhadauria went to the courts and they would not hear her case. So there is court precedent which says that you go to the human rights commission or nothing.

Mr. Brandt: In this particular instance had she gone to the commission in the first instance and not been satisfied?

Ms. Copps: They had not called a board of inquiry; so she went to the courts. They did not decide whether she had been discriminated against; they said, "It's not within our domain to hear this case." And that was the decision of the Supreme Court of Canada.

Mr. Riddell: That will certainly have to be rectified.

Mr. Chairman: We have that to look at. I don't want to debate that right now if I can possibly help it. Are there any other questions?

Ms. Copps: Just a couple. The analogy you draw with Israel I don't think really holds water, because when a Jewish immigrant comes to Israel he is immediately made a citizen. Therefore, citizens in that country receive certain rights. What you are talking about, then, are the regulations and rationale behind the making of a citizen rather than equal treatment for citizens and noncitizens in the Israeli situation.

Mr. Roach: I'm not making any comparison with Israel. I was asked if I knew of any situations; so I just mentioned those. But I believe there could be good grounds for discriminating on that basis in some cases.

Ms. Copps: You mentioned that there was another jurisdiction.

Mr. Roach: Yes. I said two, but I can think of many other jurisdictions. The country of Cuba, for example; if they accept you as a legal resident--they have accepted a number of people from places like the Latin American countries--they allow you to take any part up to high levels without qualifying on the

basis of citizenship. The moment you are given landed status or permanent status or legal status to accept employment then you can take any kind of employment.

Ms. Copps: I can see the areas where you feel there are problems. Do you feel that should extend to the area of voting?

Mr. Roach: Voting? I haven't given it much thought. I can say without hesitation that the ideal would be if all persons in a country had the same legal rights. That would be ideal. But we cannot deal with ideals when we are faced with a practical situation.

As I mentioned before, you could vote up until just recently if you were a British subject--and you still can in certain kinds of elections. In federal elections up until three or four years ago you could vote immediately.

11:20 a.m.

Ms. Copps: So that's discriminating Canadians and British subjects versus all others, which is unacceptable.

Mr. Roach: That's right. So if it was that discrimination, then one wonders what makes it a very special qualification if the person is capable of civic obligations and civic understanding.

Ms. Copps: I guess the difficulty that you run into is with international situations. For example, if you come from the United States and you vote in Canada, you renounce your rights as an American or vice versa. There are lots of different situations in different countries. What you are suggesting is the ideal of a world where there would be no boundaries in political rights or citizenship.

Mr. Roach: That would be ideal, but that's beyond the powers that we have here--

Ms. Copps: Of this commission.

Mr. Roach: --for the reason that there is a lot of federal power that's involved here in this whole area--the whole idea of citizenship.

Ms. Copps: Okay. I just wanted to zero in on two other areas. One, you have mentioned that public advertising should not contravene sections 2 or 4 and sections 19(1) and 21(6). Another group has suggested that the definition of "personal" need be tightened up a little bit and that section 19(1) be left. I wonder what your feelings are on that. They feel that it could be interpreted to include any type of work in a domestic setting as opposed to the intent of ministering to the very personal needs of an individual.

Mr. Roach: I can see their concern. Of course, I don't know if it should be tightened up any more, for the reason that if a person is working in the same space, the same living space,



whether the person is actually a nurse touching the person's body or a maid sweeping, I see very little difference. But coming back to the ideal, there should be no discrimination, period. That's the ideal. But I don't think the public is sufficiently aware, and I don't think people at this point in our development are ready for a kind of situation where in their own personal households they could not have a preference for one particular racial background.

Ms. Copps: But the logical follow-up to that would be to ask why an individual in, say, his own business, where he is working in close quarters in maybe a one- or two-person operation, couldn't have those kinds of rights.

Mr. Roach: Actually, what I'm saying is not logically supportable, as you've pointed out. But I am just saying that it's an accommodation for our present development and situation. So when we deal with a commercial situation, when we go to the public, we have different standards than when we are dealing in our own private homes.

Ms. Copps: Can you also give us a copy of the United Nations resolution of 1962?

Mr. Roach: Sure. I have here a book called Human Rights: A Compilation of International Instruments. This has got almost all of the human rights international documents, including the Universal Declaration of Human Rights.

Ms. Copps: It seems to me--and I may have missed when you were reading it--one of the things pointed out in that resolution is that there should be an intent, for example, to incite to riot. And it's a little bit different from the wording you use here that all organizations based on ideas of racial superiority, justifying or promoting racial discrimination in any form, must be prosecuted or outlawed. And I guess that's what you were talking about when you said that governments feel they cannot necessarily legislate every organization.

Mr. Roach: Yes. I think that's a correct observation. It says, "with a view to or with an intent." in other words, if you look at this very carefully this might mean that organizations based on ideas or theories of superiority may be permissible if they do not have a view of promoting racial discrimination or justifying racial discrimination. It is with a view to the intent. So long as they do not have that intention, it may be difficult to have legislation. There is a slight difference, I guess, between what we say here and what was in that article I read.

Mr. Chairman: Any other questions? If not, thank you very much, sir, for appearing before us this morning. Miss Sehmi?

Miss Sehmi: My thanks to Mr. Richardson and Mr. Taylor for inviting me to present this brief in respect of Bill 7.

Ladies and gentlemen and respected members--or what is left of them--it would have been better, in a way, not to have presented copies of the brief first to keep everybody awake, but I

understand everybody has a copy of the brief. There is a slight variation from the original one presented. I would also like to mention that my father came along as he was very interested in the proceedings--Mr. Sehmi.

The mere fact that I am presenting this brief does not mean the problem of job discrimination against the Sikh community will disappear overnight. I was tempted to write not only because of the timely pamphlet put out by the human rights commission, entitled Human Rights in Employment, but also due to personal experiences related by friends, family and acquaintances. Although it is mentioned in the said booklet, it is now illegal for an employer to demand Canadian experience as a job prerequisite, I should like to recount a tale.

Several weeks ago I was at the airport to drop off relatives who were on a visit here. Just next to me I noticed a couple both sobbing hysterically. I sent my sister over to find out what was wrong and learned from them the man's mother, a visitor to Canada, had just flown back to Iran. The couple explained that since they belonged to the Baha'i faith, the mother would certainly be persecuted on her return to Iran and that most likely, that was the last time they would ever see her again alive.

I kept in touch with this couple and later found out they had fled Iran about two years back. Upon arrival the husband spent his savings on a business venture which turned out to be a shoddy deal and he lost heavily on that. He has been trying to find a job since, but everywhere he turns he has been told he does not have Canadian experience. As a final resort he is turning to full-time computer studies now. His wife, a business degree holder, has met with a similar fate.

I am simply astounded that as a textile engineer with 10 years experience in Iran, this man has not been able to find a job here in Canada. In Iran he held a very good position and he enjoyed a good standard of living. But this was not the case here. His savings had been spent on the business venture which turned out to be not quite as he expected. His experience as a textile engineer would be invaluable to Canada mainly because of the fact there are not too many around.

11:30 a.m.

He went to Manpower, which was not much help. Again job placement should be based on merit and experience and not on one's social background. Although this man was an Iranian he was an immigrant and he did meet with job discrimination. So it is not only the Sikhs who face a real problem as far as jobs go, especially on the middle-to-senior management level. Psychologically, very few Canadians are prepared to accept a foreigner or immigrant as their boss, even though they might merit the job. Thus they invariably get placed in lower level jobs with comparatively lower pay than a Canadian would.

A fleeting incident comes to mind. Police harassment is another thing I would like to mention. The RCMP patrol cars are almost becoming a tourist attraction around Gerrard Street where

there is a string of Indian shops, restaurants and a cinema. Incidents are recounted time and again by newcomers--how they have been nabbed time and again for minor infractions.

The earlier case about the Iranians who fled because of religious persecution as Baha'is in politically unstable Iran shows how easy it becomes to turn upon a minority group and use them as scapegoats. Such an attitude, although excusable in current Iran, is however unacceptable in an advanced sophisticated country like Canada, even if it is a form of persecution which is indirect and subtle. The situation between the two countries is like day and night--Canadians are more enlightened or should be coming, as they do, from various and unique backgrounds.

That is all the more reason why present immigrants should not necessarily have to go through what previous groups of immigrants had to throughout Canadian history. So it is in that light that I wrote to Mrs. Crittenden, chairman of the Ontario Human Rights Commission. I shall just read my letter which you have in front of you:

"This is to write and congratulate you on the recent Human Rights in Employment guide for employers, employees and employment agencies, which I think was long overdue, especially as it applies to newly-arrived immigrants in their efforts to obtain employment.

"I have a few suggestions for your future consideration. I would point out that in point four of the above guide where it is mentioned that 'it is unlawful for any employer to seek to place a job order, or for an employment agency to accept a job order, which limits applicants on the basis of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin.'"

As I mentioned in my letter, I am from East Africa, of Sikh--which is Indian--origin and would like to relate some problems Sikhs have faced here in Canada. While Kenya was truly cosmopolitan and I grew up among blacks, Asians and whites, to put it rather crudely, I had a similar idea about life in Canada or most western countries. However, the literature I was given in Nairobi mentioned "culture shock" and at the time I dismissed it, not having had any notion what culture shock meant. Anyway, later incidents or events or a general awareness of my new situation confirmed that there was such a thing as "culture shock," even for one who grew up in a cosmopolitan atmosphere and was well versed in the English language.

Without rambling on, the point I am trying to make is that I belong to the Sikh religion and our religion demands a particular form of dress, namely a turban for the males, unshorn hair for both males and females, and "salwaar, kameez and chuni"--which is trousers, dress and scarf--for the females. The other alternative for the women is to resort to the more familiar sari.

Many times people of the Sikh faith, friends and family have recounted tales of how difficult it has been for them to get jobs. It is especially hard for the males because they happen to wear a turban, which is an unfamiliar sight to the majority of Canadians.



As I mention in my letter, in one instance a Sikh gentleman tried very hard to obtain employment but in the end was forced to drive a taxi rather than resort to the next alternative, which was to cut off his hair and look like everybody else. The hair and the turban have particular religious meaning for the Sikhs. Many Sikh youths due to their being unaccepted in their turbans just take them off and shave off their hair. This means it is easier for them to obtain employment, but within the Sikh culture they run into extreme criticism, are stigmatized and according to the orthodox Sikh religion are outcast. Therefore they are placed in a very ambivalent, almost schizophrenic position. In other words, they find themselves neither here nor there.

The females, on the other hand, fare slightly better. Instead of wearing the Punjabi dress, common to Muslims as well, they merely resort to wearing the acceptable western-style trousers and blouse. This is all right when you are going to work in a place of employment where there is no particular dress code e.g. factories, shops, warehouses, which are the places most immigrants in the earlier part of their experience in Canada find jobs. For example, in my own case and in that of friends, it would be very hard to turn up for an interview in an office attired in Punjabi dress and to find yourself being offered the job.

My point is that I certainly do not consider this a form of racism, favouritism or whatever. It is a form of ignorance and unfamiliarity. The fact is in the western culture, the dress is the normal attire whereas in the Indian culture the dress minus the trousers is considered taboo. In fact, it is not acceptable for a women to show her legs. Sikh ladies will not wear thier Punjabi dresses for fear of public disapproval. On the other hand, the Canadian majority is not very familiar with this type of dress, hence they cannot help feeling a bit strange.

The only way to overcome this would be to keep on wearing said attire, I suppose, until it becomes acceptable and is no longer a unique sight. I feel therefore it is necessary to add the words "dress based on one's religious background, ancestry or place of origin" to your fourth point mentioned earlier where it says it would be unlawful for an employer "to seek to place a job order, or for an employment agency to accept a job order, which limits applicants on the basis of race, creed, colour, age, sex, marital status or nationality."

The plight of the Sikhs is genuine, more so for the males. I could recount endless tales but I shall leave it to your imagination. I do not want to bore everybody. Of course, it is not too problematic for the younger generation who are getting assimilated into the Canadian culture. However there is extreme pressure from family and social circles not to stray from the Sikh religious way of life. I think this is even more so because generally in today's employment more and more western youths are straying away from being particularly orthodox in their religion. I guess it is harder for Canadians to accept orthodox religion of other nationalities.

There was other thing that came to mind after I had written my letter. This was that freedom of dress on the grounds of one's

religious preferences should not be taken to mean freedom of any or all types of dress. That brings me to a Canadian university graduate who insisted on wearing his shoulder length hair, beard and jeans to interviews. Of course, he was rejected by most firms.

Thank you for listening to me.

Mr. Chairman: Thank you very much. Are there any questions anyone has?

11:40 a.m.

Ms. Copps: Is your father working now?

Miss Sehmi: My father came to this country about six years back. He came at a time when it was not very easy for him to get a job. He is a qualified engineer and has also been a businessman for most of his life. He was about 59 or 60, if I remember correctly, when he came here and he tried very hard to get a job, even went to the extent of writing to most firms asking them to give him employment just for the fact that he should be kept busy. He was even prepared to work without a salary. The other thing was his age. On that fact alone, his experience would have been invaluable. He worked under top British engineers and that is how he got his experience.

Mr. Sehmi: It was impossible.

Miss Sehmi: It was impossible for him to get a job here so the next alternative was to set him up in some sort of business but again, that is tricky for newly arrived immigrants, and that is the last thing that they should do until they get used to country.

Ms. Copps: Do you feel that with the code not including dress, or let us say religious dress as a prohibited ground, that ideally the element of religion should cover that? It should, I think. In application it may not, but in application dress may not either.

Miss Sehmi: The fact that dress is not mentioned, it is like out of sight, out of mind. The mere fact that dress would be included does not automatically mean that people, or prospective employers will start employing people attired in their religious form of dress or whatever, but it is a start.

Ms. Copps: We are going to have the commission here next week, but it seems to me that there have been some findings against companies that would not allow an individual--I am thinking of Hamilton, where luckily they resolved it, but they were not going to allow the bus drivers there to wear their turbans.

They did resolve it before going to the human rights commission, but I think that there are some precedents in the commission for forcing employers to allow religious dress codes.

Miss Sehmi: For instance, there was another incident.

There was a Sikh who applied for a job in a factory as a fitter, or something along those lines. The manager, or the supervisor, came right out and he said, "I am afraid I cannot give you this job. Your attire would just distract the other Canadians and they would not be able to concentrate on their job." He came right out with it. Things are improving, but it is still there.

The next alternative is most of the Sikh immigrants, or most immigrants as a rule, get slotted into lower level jobs, even if they might be so qualified.

Ms. Copps: They had a decision, in fact it was raised yesterday in the committee, but fairly recently a decision about the Sikh individual who wanted to wear his turban on a construction site, and he was going to be allowed to. From a safety point of view, is there a possibility of having--can you wear a hard hat on top of your turban?

Mr. Sehmi: Yes, I know of some people who do. First of all, the guy has a small turban on, not a big one.

Ms. Copps: A small turban, yes, and then they wear a hard hat over the top?

Mr. Sehmi: I know some who do that.

Miss Sehmi: But again, I think that should be a matter of safety yes, but on the other hand, for example, in India, there has always been wars there, and the Sikhs are known as a race who are the first ones to go out and fight for their country. As far as I know, they have never worn hard hats, or protective gear during war. They have always gone out with their turbans regardless.

Mr. Sehmi: In life, one must have a sixth sense, to see that they are still--

Ms. Copps: I think the implication there is if you want to take that chance upon yourself, that is your business, but when you are on a construction site, and it could affect other people, they have to apply the rule of thumb across the board. In factories, also, they have only recently introduced things like safety goggles or something like that. A lot of people say, "We have never worn them and therefore we are not going to wear them; we have never had any problems."

Miss Sehmi: Yes, but the turban is a hard hat as such, it is a form of protection. It is not as though it is (inaudible) the odds--

Mr. Sehmi: In my case, I have been a steam fitter, fitting boilers (inaudible) and all that. All my fingers are all complete. None of them are cut.

Mr. Sehmi: The question never arose as to his wearing a hard hat.

Ms. Copps: I just wondered in this case if there is a



possibility of wearing a smaller turban and wearing the hard hat over top, that would seem to satisfy all--

Miss Sehmi: Again, on an individual basis, I think some people might relent and might feel that it--Of course, we are still wearing the turban, but as a rule there has been no question of it. In Kenya, we never had any problems as far as I can tell.

Mr. Sehmi: No, there are no hard hats there. It is only one in a million or one in a thousand--

Ms. Copps: Basically, the question boils down to whether it would compromise your religion to wear a hard hat over your turban. If the answer is no, then--

Mr. Sehmi: Wearing a hard hat is a (inaudible). It does not look nice for a Sikh to wear a hat. We don't want it.

Miss Sehmi: That is again on religious grounds.

Ms. Copps: But you wouldn't wear a hat over your turban?

Miss Sehmi: He will not wear a hat over his turban, but as my father said, he has known of some cases where, yes, they would.

Ms. Copps: It is considered a religious taboo.

Mr. Sehmi: I would refuse to wear the hat. Personally, I would refuse. I would call it my duty to refuse in any way--

Ms. Copps: The other question I wanted to ask was on the issue of the police. You raised the issue that in your community around Gerrard Street, you feel there seems to be an attitude that the East Indian community faces discrimination more than the average. Can you elaborate on that a little bit?

Miss Sehmi: As I said, I have had many friends and acquaintances relate incidents. Some of them have not been in the country for very long. They have been here six months or shorter periods or longer and they are not very familiar with the rules. They might get their licences and in some cases, surely the police should relent or give way in such cases or at least advise them of minor infractions.

For instance, in the case of somebody I know, very recently, this particular gentleman was nabbed for taking a wrong turn and a host of other things like not wearing a seat belt and the fact his licence was not renewed and that sort of thing. That was that. The policeman wrote out the various tickets and the gentleman consented to pay the fines and off he went home. Of course, he was not to drive the car because his licence had not been renewed and he was to get a friend or get other means to take the car back home. As far as I am concerned, that should have been that, but later that night the police came round until they eventually found the house and they were sort of poking about the place--

Mr. Sehmi: With a flashlight.

Miss Sehmi: With flashlights. That was so silly. As far as I am concerned, he had issued the tickets, the fines would have been paid accordingly, and I don't understand why the patrol car had to come to his home, to track the man down with flashlights and stay up all night. I don't know what they were waiting for, or if they were wondering whether the man would come back driving the car himself or whether it was just a form of adventure for them to vent their frustration. That is just one incident.

I may be exaggerating, I may be wrong, but certainly that is the feeling among a lot of people who have recounted such tales.

11:50 a.m.

Mr. Chairman: Thank you very much for appearing before us this morning.

The subcommittee on aging, mayor's task force for the disabled and elderly, Ivy St. Lawrence and Debra Ceresne.

Mrs. St. Lawrence: May I introduce my companions who have come along as resources if needed? Debra Ceresne is with the mayor at the department of planning and development. Martha Bobrovskis is the co-ordinator for the mayor's task force for the disabled and elderly. I am Ivy St. Lawrence.

Mr. Chairman, ladies and gentlemen, thank you very much for this opportunity to present our thoughts. Knowing your time constraints and the fact that you have received this documentation, would you like me to skip reading it? I am afraid, Mr. Renwick, that it is longer than one page.

Mr. Chairman: If you would like to highlight what you have for us? Whatever you would like to do.

Mrs. St. Lawrence: Well, I'll just start for your benefit. I am a quick reader.

First, the historical background, and I imagine that you ladies and gentlemen know this pretty well. The legislation is outlined in the first paragraph and we do point out that the aging population is increasing dramatically and hence its potential as a political force is also increasing. That, I am sure, you also know.

We go on to talk about the Human Rights Code and when mandatory retirement at age 65 was brought in. At the time it was acceptable for two reasons: (1) To retire was an important concept and; (2) the availability of a plentiful, youthful work force supported mandatory retirement. However, the desire now is for permissive retirement legislation.

Voluntary retirement is a question of moral right and in the opinion of the subcommittee on aging, it would be a wise strategy for the Ontario government to pursue. Most employees who have worked most of their lives are not suddenly unproductive at age 65 and in many cases still want to make valuable contributions to their organizations. We then mention Chancellor Bismarck of

Germany, where the retirement age of 65 seems to have been set down first. It also mentions--and I am sure you are all aware of this too--the tremendous contribution to the world that has been made by people over 65 and it quotes the former Governor General, Mr. Roland Michener.

The moral question of whether a man or woman should have the right to choose their age for retirement runs very deep and should be a personal decision. Not only is it a waste of human resource to force mandatory retirement, it is a denial of human dignity and is in fact pathetic to force someone to withdraw from a career when they are highly capable and extremely willing to continue working. We then outline the philosophical and moral arguments.

It is necessary to look at the issue of mandatory retirement from the most basic viewpoint, the right of every individual to a fulfilling and meaningful life and equality under the law for achieving the best quality of life possible. The current Human Rights Act does not allow those individuals over 65 the opportunity to achieve the best quality of life for themselves and is therefore discriminatory. It then goes on to give current statistics and says: "Inflation has eroded their dollars and for many the leisure years have become sorrowfully transformed into the survival years. The elderly should be given a right to earn a living to maintain a decent standard of life."

For others, economics is not the overriding factor in determining whether or not they should retire. There are people who want to work to maintain a healthy mental attitude and a healthy body. There is that segment of the ageing population who would welcome the option to make a contribution to our society and this would allow them to grow old with a feeling of self-worth and dignity. It is important that these individuals be allowed to remain in the work force.

It goes on to mention statistics of the high death rate among men in their second year of retirement.

The skills, experience and wisdom accumulated over a lifetime should not be wasted. It is absurd to assume that at age 65 a person suddenly becomes unproductive and should be forced out of their companies and organizations where they have contributed their valuable resources. We feel there is no justification for removing them from the work force. Competence, not chronological age, should be the factor that determines retirement.

Therefore, a denial of voluntary retirement constitutes a denial of the elderly to fully participate in the benefits of the society they so energetically contributed to throughout their working years. Each and every one of us, including the elderly themselves, must change their attitude about age. It is these outmoded and conservative viewpoints that reinforce the stigma of old age.

It goes on to mention the implications to society and concerned parties. I think that is self-evident. I will go to paragraph three.



If people continue working past 65, the burden to shoulder the elderly will be lessened. Plans could be worked out individually with employee and employer. Union contracts could be rewritten to include part-time work and/or job sharing. This concept would have benefits to other age groups as well, such as women or a dissatisfied employee. Health costs in this country could decrease as more people engage in healthy and productive work.

Then it quotes the Ontario advisory council: "Its basic goal of trying to create a province in which it is possible to grow old with dignity and a sense of usefulness, to have a choice of one's own destiny, to live in a place where people have a concern for each other, and where rejection is no longer acceptable."

In conclusion, the present elderly population is being forced to retire at 65 as a result of an outdated document based on the myths of the golden years. This discriminatory code negates the realities of the fast changing society in which we live today. The year 2001 is fast approaching. We must begin now to build a just society that we will all be a part of then. Let us lay the foundation today which will allow us to build for a better tomorrow.

Therefore, the recommendation is that the definition of age in the Ontario Human Rights Code 1981 be amended to read, "age means an age that is 18 years of age or more."

The seniors' subcommittee is aware that two results will flow from the alteration of the definition of age. One, senior citizens over 65 could not be denied housing, service, work or other protection of the Human Rights Code, 1981, merely because of their age. Two, mandatory retirement would be terminated in Ontario. A person's retirement date would be flexible, instead of being forced to retire at 65. What will be considered in fulfilling a position will be the person's competence and readiness to do the job.

Mr. J. A. Taylor: Philosophically, I do not see why anyone should be fired because they reach the age of 65. You go even further than Professor Triantis did the other day. He only wanted to raise it from 65 to 70, the one step at a time philosophy.

Mrs. St. Lawrence: There are many people over 70 who have an enormous amount to give to society still.

12 noon

Mr. Renwick: I really had just two comments or questions. The first comment is I do not have any problem that there appears to me, in any event, to be a drafting error in the bill with respect to accommodation and that kind of question with respect to age. Whether it is a drafting error or not, we will have to deal with it. As I put it bluntly the other day, this seems to give authority the day you reach 65 for you to be harassed by somebody.

The other question that has been raised is the right to equal treatment in the enjoyment of services, goods and facilities, and the same with respect to the right to contract, raises questions about price preferences given to senior citizens, for example, on the Toronto Transit Commission, admission to theatres and that kind of thing. Had you given any consideration to that?

Mrs. St. Lawrence: We had decided that the financial implications were very wide ranging and subject to a lot of different interpretations. The Ontario advisory council has gone into that in a great deal more detail than we at the moment could have done. Therefore, we decided to leave it to such a body for the moment. We are going ahead, we are looking into it, but at the moment our emphasis is on human rights.

Mr. Renwick: I do not see any problem in us carving out an appropriate exception to permit that kind of preference in here but at the moment it would appear to be excluded, that the lower fare on the TTC for senior citizens, for example, would appear to be prohibited here.

Mrs. St. Lawrence: I would be very sorry to see it happen because you do depend on your senior citizens more and more as volunteers. They are volunteering in enormous numbers and, believe me, it costs money to be a volunteer.

Mr. Renwick: There is certainly no dispute about that. It is just that we are going to have to carve out some kind of an exception with respect to that.

The crucial question of employment, though, is one which has caused us quite a bit of difficulty in its relationship to pensions. With your general philosophical position, the older I get the more I am in agreement with it. Apart from that, I know the labour movement, for example, is equally concerned about it, whether or not it will end up requiring people to work longer than they had anticipated working, particularly in the case where the compulsion exercised is a low pension and they need more financial support and that kind of question. Mr. Taylor, of course, is chairing that committee and I assume they will be dealing with that.

Mrs. St. Lawrence: I would be very sorry to see the pension age changed up, certainly. On the other hand, in these days of shrinking nest eggs, I know they are shrinking now to about the size of humming birds' eggs, these nest eggs that people had hoped to live on to supplement their basic pensions, I could visualize leaving the pension age as it is now but, if a senior chose to work, then the taxes would flow into the economy and, instead of being a burden on the economy, they could make a contribution to the economy.

Mr. Renwick: Specifically, say there was a situation where a person was employed. There was no question that in the particular organization he could continue his employment but the pension was vested and he was entitled to draw it at age 65, do you see that person drawing the pension and continuing to work, or

do you see some adjustment made to defer the pension entitlement until the actual day of withdrawal from the work force?

Mrs. St. Lawrence: You are asking me for personal thoughts on this matter which I would be glad to give. I think it would be unrealistic for pensions to continue to build up until a person left. In other words, I do not think it would be economically feasible to go on so that the person who had the energy and the expertise to work until 75, that they got that much bigger a pension.

No, I would say that they become pensionable at 65 and get their pensions at 65 but, if they wished to work, then that would be taken care of in taxation to go back into the economy. That is my personal opinion.

Mr. Riddell: You have concentrated on the upper age range included in this bill, and rightfully so. Do you have any personal views about the lower range? I see in your recommendation you are still using 18 as the lower range. What if you had a grandchild who was, say, 16 years of age, who could not cope with education, wanted to get out into the working world, is able to leave home without parental consent and does so. Should that child for two years be discriminated against?

Mrs. St. Lawrence: True, at the moment, young people are under their parents' guidance until they are 18. However, any kid of 16 who wants to get out is going to get out. There is no getting away from that. There is little parents can do to bring him back because he will leave again.

Recently, there was in the newspaper, this family that had to pay some \$6,000 for their child's education, who had left home at 16, gone on with his education and had sued them for it. This is something I think is at the moment outside my expertise. I know there is a lot of work being done on it. The federal Juvenile Delinquents Act is being worked on. There are people working on other aspects. If you ask my personal opinion, I think a child at 16 who wishes to leave home should be allowed to do so.

Mr. Riddell: Maybe we should be lowering the lower age limit in this.

Mrs. St. Lawrence: Since we cannot be all things to all people--at the other end of the scale, I am sure there are very competent people looking at the matter.

Ms. Copps: I wish to ask one question of Mr. Brandt. I believe the point raised by Mr. Renwick is covered in number 14, which allows exemptions for special programs where you identify economically disadvantaged or other groups in the code.

Mrs. St. Lawrence: Yes, positive discrimination is covered.

Mr. Brandt: Yes, on a voluntary basis.

Ms. Copps: It is built in. The other question. Do you



any copies of Statistics Canada's study? Did they use a control group of people who had not retired?

Mrs. St. Lawrence: I field that question.

Ms. Ceresne: As far as I am aware, I do not know of any study done by Statistics Canada like that.

Ms. Copps: You have a study you quote here which found the high death rate of men who were in their second year of retirement. I wondered if we could have that study and if there had been a control group of nonretirees of the same age. To give us an idea--some would theorize that retirement can in some cases hasten your death and obviously that would have some bearing on the committee's decision.

Mrs. St. Lawrence: We could certainly procure it for you.

Mr. Chairman: Thank you for appearing before us today and giving us your views. Ward 6, New Democratic Party Association. Phil Biggin.

Mr. Blank: Mr. Biggin could not make it. My name is Abraham Blank. I am one of the members of the housing work group that helped Mr. Biggin prepare this brief so I will be reading it for him.

You have before you today the initial brief submitted by the Ward 6 NDP dated June 15, 1981. We appreciate the opportunity to appear before the committee and expand on this brief in light of further thought and discussion. That was the original brief that was a page and a half long. I do not think you actually have it in front of you. What you have is our expanded brief.

12:10 p.m.

Ward six is in the heart of the city of Toronto. It extends from Bloor Street south to the lake and from Palmerston on the west to Sherbourne Street on the east. Within those boundaries one finds one of the highest concentrations of apartment buildings and other rental accommodation in the province. Ward six is believed to have the largest gay population in Canada, and second on the continent to San Francisco. Therefore, our presentation today will focus on two areas of particular concern to the people of ward six: discrimination against families in the occupancy of accommodation and inclusion of sexual orientation in the Human Rights Code.

Subsection 2(1) of Bill 7 prohibits discrimination in the occupancy of accommodation on the basis of family. However, subsection 19(4) of the proposed code severely limits that prohibition by exempting all accommodation that is "in a building or a designated part of a building that contains more than one dwelling unit served by a common entrance," and where the occupancy of the entire building or designated part of the building is restricted because of family. If the code is enacted as it now stands, it would be legally permissible to prohibit families from living in private rental apartments and condominiums.

The protection given in subsection 2(1) would only apply to detached, semi-detached and row or town houses. This results in economic discrimination. If you have the money, you and your family are welcome to rent a house, but if your family has a limited or modest income your search for housing will be more difficult.

Single parents and people who live in common-law relationships will face even greater hurdles in their search for housing. Subsection 19(3) allows discrimination on the basis of marital status in a building of four or fewer dwelling units, one of which must be occupied by the the owner or his family. Often flats or apartments in owner-occupied buildings are the most economical form of housing available. Certainly, marital status is a private concern which is irrelevant to the contractual relationship between landlords and tenants.

We are particularly concerned about the decline in affordable family housing in the central part of the city, which is exacerbated by the existence of adult-only buildings. The continual decline in the vacancy rate in Metro Toronto from 1.7 per cent in 1975 to 0.7 per cent in 1978 and to 0.4 per cent today increases the ability of the landlord to arbitrarily discriminate against families. The shrinking of affordable family housing has been caused by:

1. Rising prices for existing freehold housing: In May 1981 the average price of a home sold in the Toronto area was approximately \$93,000, well beyond the reach of the average family. House prices have been escalating at excessively rapid rates in the city of Toronto. For example, in 1980, house prices rose 15 to 35 per cent in many areas of the city while prices rose seven per cent for the whole Toronto multiple-listing-service area. Given current trends, housing in the central part of the city will soon become exclusively housing for the rich.

2. The unsuitability of new housing production for families: New housing in the city of Toronto, except for nonprofit units built by Cityhome or co-operative resource groups, has been mainly in the form of higher-priced rental accommodation and luxury condominiums appealing to small "empty nest" households--childless dual-income professionals or older adults who have sold their family homes).

Only 16 per cent of the new housing built in the city of Toronto between 1974 and 1977 contained households for children. The dominant feature of the new housing built is its nonfamily orientation. The city of Toronto's official plan specifies that 40,000 new dwelling units be approved between 1976 and 1986, 25 per cent of which should be suitable for families with children. The occupancy of new housing by families with children is well below the levels targeted.

Consistent with its policy as expressed in the official plan that the city of Toronto should be a place where families are welcome, Toronto city council has attempted to ban adult-only buildings. Under pressure from the city, the provincial government

passed enabling legislation in 1975 ostensibly giving the city of Toronto the power to ban adult-only buildings. The bylaw has had little impact. All buildings that were adult-only as of October 1, 1976, are exempt and it is virtually impossible to enforce. A complainant must prove that the building contained accommodations that were shared by at least one adult and one or more children on October 1, 1976. The answer, however, is not to devise a more efficient bylaw but to provide protection from discrimination in the occupancy of accommodation on the basis of family for all residents of Ontario.

We believe the Human Rights Code should be amended to prohibit adult-only buildings because:

1. Adult-only buildings violate the basic human rights of family households for children. Decent affordable housing is a fundamental human right. Subsection 2(1) of Bill 7 declares that the denial of housing on the basis of family is discriminatory. There is no logic in denying the protection against discrimination to families who seek to live in apartment buildings. Children have a right to housing in the same way as the members of any minority group.

It is sometimes argued that children as a group are more destructive or make more noise than adults. Human rights legislation is aimed at preventing this type of stereotyping which results in the denial of individual rights based on ill-conceived notions of group traits. In fact, the category "adults" includes many individuals who may well be more destructive or create more noise than children. The Landlord and Tenant Act provides adequately for the resolution of complaints arising from behaviours which infringe upon the rights of landlords and other tenants.

Children should not be ghettoized. To the fullest extent possible, government policy should encourage the integration of people of all ages in their communities. Families with children should have equal access to residential accommodation along with the childless.

2. We feel that the private market, not just the nonprofit housing, should provide affordable family accommodation.

3. Alternatives to home ownership for family households are clearly needed in the city of Toronto. Private rental and condominiums should be available to families.

4. Community facilities--school and recreational facilities, transportation facilities, water and sewage--are in existence in the city of Toronto. These facilities should not be underutilized while scarce financial resources are used to provide such services in more remote suburban locations and outside of Metro.

We would like to point out that the only exception to our proposed abolition of adult-only buildings should be for senior citizen buildings as we recognize that the presence of children may pose problems for the elderly. We support the following exemptions from subsection 2(1): (1) Canada Mortgage and Housing



Corporation funded senior citizen housing; (2) current private housing that is 100 per cent occupied by senior citizens; (3) new housing planned for exclusive use by senior citizens.

Categories two and three should be certified by making application to the human rights commission. If any unit is rented to a non-senior the building would lose its certificate.

We urge that you delete subsections 19(3) and 19(4) from Bill 7 so that families are afforded the basic human right to accommodation without discrimination. The report of the Ontario Human Rights Commission, Life Together, recommended prohibiting discrimination on the basis of family or marital status. Human rights legislation exists to prevent people from arbitrarily excluding other groups of people from their environment, not to guarantee the rights of one group to exclude another group.

Traditionally the Ontario government has been the leader in the field of human rights legislation. Indeed, in 1954 Ontario passed the first Fair Accommodation Practices Act. Manitoba, New Brunswick and Quebec have provided legislative protections against adult-only restrictions. Ontario should retain its position in the forefront of human rights legislation by protecting its citizens against discrimination in accommodation.

Sexual orientation should be included in the Ontario Human Rights Code as a prohibited ground of discrimination. Life Together and the report of the British Columbia Human Rights Commission recommendations for change advocated the inclusion of sexual orientation in provincial human rights legislation.

The Quebec Charter of Human Rights and Freedoms passed in 1975 prohibits discrimination on the basis of sexual orientation. This is another example of Ontario abdicating its traditional leadership role in minority rights.

There should be a legal obligation to treat homosexuals fairly. As stated in Life Together: "Because they are not protected from discrimination on the grounds of their sexual orientation, many people in Ontario who are homosexuals live in constant fear that they may lose their jobs, their living accommodation, and other basic necessities, if their sexual orientation becomes known.

Mr. Chairman: Thank you, sir. Are there any questions?

12:20 p.m.

Mr. J.A. Taylor: That was certainly a point of view, Mr. Chairman. I must confess that I, for one, do not subscribe to most of it. Of course, economics and money tend to discriminate do they not? That is really the basis of our economic system--that we have rationing. What a person's choice is and what he can participate in is money--how much money you have available to you. So I guess from one point of view you are always going to have that. If that is discrimination I suppose you are always going to have economic discrimination.

Mr. Blank: No, but is the Human Rights Code not supposed

to rectify that partially?

Mr. J.A. Taylor: That is where your philosophy and mine probably part, because I question whether our Human Rights Code should be an economic blueprint. However, I do not want to get into a philosophical argument with you. I appreciate what you have said and you have said it well.

Mr. Stevenson: I just wondered if there was any significance to the fact that when Ward 6 NDP moved in, that the Ontario NDP moved out.

Mr. Blank: No, I think Richard is more occupied with his leadership campaign than he is with--

Mr. J.A. Taylor: Are you trying to point out, Mr. Stevenson, that there are not any NDP members at present to support--

Mr. Stevenson: That was something along the lines that I was thinking, yes.

Mr. Riddell: I always thought the NDP had their priorities mixed up; now we know. They are more interested in leadership than they are in getting a good human rights bill in Ontario.

Mr. Brandt: Is there no shame?

Mr. Chairman: Okay fellows--you have it all on the record now. Are there any questions pertaining to this brief?

Mr. Brandt: There are some who would argue on your point regarding the economics of housing availability. Perhaps rent controls may have had some impact on the lack of construction. Would you like to make a comment on that?

Mr. Blank: No, I think the interest rates had just as much an impact as rent control. I guess in relationship to economics too, you are actually allowing discrimination, by allowing buildings with one or more units that have a common entrance--it is a very broad category. At present, 90 per cent of the housing, because it is built in the city of Toronto, is apartments. So what you are doing with that is you are allowing 90 per cent of the new housing to discriminate against families with children.

That form of discrimination is sometimes used in very subtle ways. Basically, I think one thing the Human Rights Code is supposed to rectify is that form of discrimination, especially with that percentage of housing accommodation coming on the market.

Mr. J.A. Taylor: In fairness, if I may just comment on that for a moment, I think you have to put the city of Toronto within the Metropolitan area. In other word, you have to put it in perspective. That was a reason, I guess, for the formation of the municipality of Metropolitan Toronto on the January 1, 1954. It is not an isolated community. When you talk about a development

within the city of Toronto, presumably you are talking about types of development, whether it is the CN tower or the high-rise apartment buildings, the office towers and so on, which is the core of a greater community. So when you are talking about housing mix I think it is pretty difficult to isolate the city of Toronto without looking at the Metropolitan area as a whole.

Mr. Chairman: If there are no other questions, thank you very much.

The committee may wish to give me a little direction. Mr. Palmer is here. I know the clerk has ascertained that he is willing to come back at two o'clock. We probably could hear him and still break by one, if I can find him.

Mr. Riddell: How full is the afternoon?

Mr. Chairman: I think four. I think one is not going to appear. We will adjourn until two o'clock.

The committee adjourned at 12:25 p.m.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, OCTOBER 1, 1981

Afternoon sitting



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Witnesses:

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Jamieson, A., Private Citizen  
Lazarov, C., Private Citizen  
Palmer, J., Private Citizen

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, October 1, 1981

The committee resumed at 2:12 p.m. in room No. 151.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: Gentlemen, I would like to recognize a quorum.

I apologize, Mr. Palmer, that we did not get you on this morning and I thank you for staying and coming on this afternoon.

Mr. Palmer: I appreciate your courtesy, sir, very much. I would also like to say that this draft was fairly rushed. I only learned finally last week that I was going to be on and, as you will note, I have two occupations. Between that, I tried to type it up. My typing is not the best and my "e's" tried to fly off on me. I don't know if that is symptomatic of anything or not.

I would like to thank the honourable members for their attention on such committees as this because strictly I know this is your holiday and you will very soon be back at the Legislature again. I do not think a lot of people realize just how much time members of the Legislature have to put in in times such as these.

Mr. Chairman: I think holiday is a dirty word now when the House is not sitting, but we appreciate that.

Mr. Palmer: You never have a time off. As you know, I ran for Parliament twice and I know there is no such thing as a holiday for somebody involved in politics. In fact, I must tell you a funny story.

The last time I got defeated, two weeks after at two o'clock in the morning, a telephone call came in and a voice said, "John, what are you going to do about the roads in Mountain township?" I said, "I ran federally, old boy." He said, "What are you going to do about the roads in Mountain township?" That is one reason I am slightly glad I got defeated.

I should point out that I represent no one but myself and I have no axes to grind, I hope. Having said that, let me introduce myself. I think of myself as a historian by profession who attempts to encourage young people to have some respect for both the discipline and the wisdom which can be acquired by some knowledge of that discipline. I know discipline is a dirty word as far as teaching in schools is concerned, but I am afraid I still use it.

Currently, I am head of the history department at Orillia



District Collegiate and Vocational Institute and am fast approaching retirement from that profession. In addition, I run a news service and write regular columns. In the past, I ran for Parliament twice, served four and a half years in the British army and attempted tasks too numerous to recount.

On the subject of rights, handicaps, et cetera, certain aspects of my life might be of interest. I immigrated to Canada twice, which is rather unusual, once being hijacked by my parents from the United States when I was three. After leaving for Britain when I was 13--that was another hijacking--I returned voluntarily when I was 25. In my time I have been called various types of colonial, some of them very impolite, asked where my wigwam was, a g--d-- limey, a pommie bastard by the Australians and every type of racial epithet imaginable. This is rather usual for somebody who is not strictly attached to one side of the Atlantic or the other.

I am in certain sympathy with people who object to being called Pakis or wogs, but you get used to it. I walk up the street and a guy comes up to me and says, "What the heck are you doing up there?" You've got to put up with it the whole time. Life is that way. The British army other ranks called everything east of Suez a wog. I can remember one very classic incident when this chap, Oxford-educated and all the rest of it, overheard somebody using the word wog. The chap concerned had a very hard job. He explained right off the top that he meant westernized oriental gentleman. I thought that was one of the fastest comebacks I have seen in a long time.

For a while I served in the Indian army as a British officer. I served under an Indian Indian army officer, I called him sir and stood to attention. That is not an altogether usual experience.

My experience upon returning to Canada may be instructive. A major shock came at the appointments office of the Ministry of Labour, I think. I was informed: "You Oxford and Cambridge men are the hardest people we have to place. Why don't you go home?" When I pointed out to him that I was coming home, I was told bluntly that my accent was English and there were many firms who still stuck with the practice of the 1930s--and you gentlemen look too young to remember--when there used to be signs up, "No English need apply."

I don't know why some people are objecting so much to the situation in Canada nowadays on this basis. The English have been as much discriminated against as anybody in this country if we remember the fact that the English probably represent one sixth of the total population of Canada. I don't know why we are blamed for everything as WASPs.

While I did get a job, which I left when I went into teaching, much of my searching for what I then felt was a suitable job entirely bore out what he had said. To really fit into the Canada of those days required an approach which was totally--well, if not totally certainly in general--foreign to me. None the less, it was rather strange to be told that I did not have enough

Canadian experience four blocks from where I grew up as a kid a scant 12 years before.

Now please do not think I am mentioning all this for any sympathy. I think I would insert one thing here and I think it is one thing we have got to realize about this country. It is not a promise; it is an opportunity. That is why I came back and that is why people come here. It is an opportunity. It does not promise anything; no country can.

If I knew then what I know now, I would have approached life in this country in an entirely different manner. I would have been far more willing, possibly like the Italian immigrants. You remember they used to buy a house and they would pack it full of friendly Italians. One would move out, buy another house and would pack that. Eventually, they all owned homes. I think this is the kind of thing to me which has made this country strong. It is people who have been prepared to go out and say: "Damn the torpedoes. Full speed ahead."

All I am trying to say is that to many of us immigrants the whole tone of this bill is totally foreign to what we had to do and, as I will suggest, does little for either the new or old immigrants. I should add one other item of personal interest. You may have noticed that I am slightly above the allotted span for height in this country. I say allotted span because while I served in His Majesty's forces for years with a height of close to seven feet, my son was turned down by the Canadian forces because he is six feet, six inches, the maximum height being six feet, five inches. I wonder if that fits into discrimination; I don't know.

Some years ago Lord Reith, the chairman of the British Broadcasting Corporation, was asked how he liked being six feet, nine inches. His answer was that anything over six feet, six inches, is an affliction. I agree with him.

If this bill is passed, I am hoping that I will be able to persuade the human rights committee to arrange for every door in Ontario to be raised to the same height as doors around here, have every chair I might like to sit on enlarged, insist that clothing manufacturers provide clothing to fit me and one could go on forever in this search.

People say, "Why don't you go to George Richards?" With all due deference to George Richards, I have walked in there and he has a canary right off the bat: "We haven't got a thing for you." Honourable members, I suffer from a handicap which this minority has the greatest hope will be helped by this bill being passed.

I suppose you recognize that I am talking with my tongue very firmly in my cheek. I realize this is totally impossible. It is one of those things I have to live with, like \$250 for a pair of shoes. It illustrates to me the heart of this whole problem of Bill 7.

Simply put, the basic is that governments cannot protect individual freedom and specific special rights. You can have one or the other, but not both. They are pillars at the opposite ends

of the spectrum. By bowing to one, society naturally shows its posterior to the other. I realize there are various shadings, certain practical exceptions, which you can definitely say. But if you say a person is handicapped, how do you define it?

To support my thesis I would offer the whole history of the development of the concept of freedom, liberties, rights, et cetera in England. I don't give a darn about what anybody says about the English, this is the one thing for which we should be proud of English heritage, particularly in this province.

2:20 p.m.

The English are a very peculiar people who are supposedly noted for their empire which failed--I think the English are, in fact, the lousiest empire builders the world ever knew. I mean, if you want to be an empire builder, be Russian; they build empires--but should really be important for their ideas, which will inspire men long after the last vestiges of empire have disappeared. All this despite the fundamental that, like all men, the English British have generally been far better at spouting and believing than in practising, but in the end, if there is a modern Greece, England is it.

What the history of England has proved is that general freedom for all is an attainable objective within normal human limitations, I have emphasized "within normal human limitations." It equally proves that special rights have never functioned. Northern Ireland, I think, is a proof. They all have the Bible, which is supposed to be the best bill of rights in the world, and both sides are fighting over it.

The usual thing is to take English freedoms back to the Magna Carta. That the Magna Carta specified special rights for a few and never actually came into force, only illustrates how confused most people's thinking is. What was far more significant was that each king in medieval England had to sign a charter of rights. These multitudes of rights symbolized medieval England, and while they were never general, they did give Englishmen a sense of being free, even if their freedom was only marginally greater than that of their brethren in other countries. An English (inaudible) would get off his horse and fight with his men; the French nobility rode over their men. That is possibly the immediate difference. Eventually this sense of freedom exploded during the Elizabethan and early Stuarts, leading to the civil war.

In that upheaval, as in all similar upheavals, the "revolutionary" forces were more conservative than they were revolutionary. Basically the Puritans of England could not accept the religious freedom which had developed, and were looking for more certain guidance for people's lives. Thus, the Cromwellian commonwealth tried to enforce the Puritan's concept of religious certitude and make people holy. As in all such attempts, the result was a moral dictatorship, which resulted in a moral rebellion, in the late Stuarts, far worse than was seen before. Thus, in killing Merrie England, the Puritans only paved the way for Nell Gwyn et al.



In the revolutionary settlement of 1689, the English showed the ultimate in their genius in handling rights and affiliated problems. All the so-called bill of rights did was to state those constitutional items which most people had agreed were fundamental to sound political practice in England, which is rather different from the current practices in Canada.

All the bill really stated was that certain of the crown's prerogatives could now be exercised only with the agreement of Parliament, nothing more. In fact it left the vast majority of the crown's prerogatives completely untouched, much to the delight of most modern Premiers and Prime Ministers who operate those prerogatives right now, as you know. That is why Prime Minister Trudeau is far more a dictator than Mr. Reagan ever could be, because he operates the full prerogatives of the crown.

Most significant, though, is that there was no statement of high-flown principles, no statements of individual rights, not even a statement that the crown could not reject a bill passed by Parliament. The ultimate result of the bill, true, with twists and turns too numerous to mention, was the evolution of the freest and most rights-conscious society in the modern world. Without a doubt it is the continuance of these rights and freedoms that the authors of this bill are hoping to enshrine in Ontario.

Contrasting to English methods, the French declaration of the rights of man, in 1789, contained glorious phrases about man being born free and equal in rights, sovereignty residing in the people, how no man was to be molested for his opinions, et cetera, et cetera, ad infinitum. Four years later we have the reign of terror, which was only followed in turn by Napoleon's dictatorship. The closest modern successor to the French declaration would appear to be the Russian constitution, which is the purest statement of rights the world has ever seen. Might they not be considered to be logical bedfellows?

Unlike the British and French, the Americans took the tack that it was the purpose of the courts to define and enforce their bill of rights. The way that the American courts have attempted to enforce rights, has resulted in twists and turns which would boggle even the most imaginative mind. True, the courts have attempt to attune their thinking to the age, but given the nature and lengthiness of American judicial procedures--and I am afraid we are heading in that direction--the courts have generally been about two decades behind the times. In addition, such court imposed solutions as busing leave everyone unsatisfied.

While it is very much recognised that the foregoing is a very skimpy, oversimplified analysis of the background leading to our present situation, and I recognise that I have omitted a lot of other human experience, I would offer the following fundamental criteria for your consideration.

1. All thinking, I would submit, must start from the absolute realisation that no governmental action can create a heaven on earth.

Whatever we like-- You gentlemen have an austere position,

you have an austere task in front of you, but you can't create heaven on earth for me or anybody else. For some incredibly unknown reason, we have developed in recent times a faith in legislative acts. There does not appear to be a problem in the modern world which does not result in someone saying, "There ought to be a law, we have to stop it." From the Puritans' attempts to purify through prohibition, and the current laws on marijuana, plus a thousand more examples, runs the ever present thread that laws do not stop something simply because the legislatures say so.

A letter by Wilson A. Head, the president of the National Black Coalition of Canada, in last Friday's Toronto Star, illustrates a rather pathetic example of the incredible expectations people have of such legislation as Bill 7. He says, and I quote: "The freedom to hate and to discriminate has been part of our society for much too long"--I don't know where he gets this from but that is what he says--"and the sooner it is eliminated, the better for all citizens of this province."

Bill 7 can no more stop black hating white, white hating black, black hating black or white hating white, than I can stop the earth turning around. I would argue, it actually reverses the process.

Further, what Mr. Head fails to realize is the fundamental that freedom is indivisible. You can't divide it up. You can't say, "We will not allow this freedom because we don't like it," without immediately compromising all other freedoms. You can't say you can't write about the KKK without saying you can't oppose the KKK. You have to have it one way or the other. This surely is the first lesson from Hitler's Nazi Germany and every other dictatorship. To ensure that Germany was "free" from communists and Jews, Hitler created a dictatorship which made Germany free from freedom.

Mr. Head sounds rather like the old saw: "When the revolution comes, you will eat strawberries and cream." "But I don't like strawberries and cream." "When the resolution comes, you will eat strawberries and cream."

On the practical level governments can and do make laws outlawing specifics, specific crimes such as murder and assault, which these various arms of the law and justice can deal with. They are practical problems which can be dealt with in a practical manner. Theories, ideas and ideals are all very nice and make nice reading, but they are totally beyond the capacity of governments to cope with.

Bill 7 has the fundamental problem that it attempts to create heaven on earth. How do you define a "handicap"--over six foot six inches or over 400 pounds? Does sex discrimination mean I cannot become a go-go dancer? As an old professor used to say, "It all depends on what you mean by..." There are so many "depends" in this bill that everyone will be in the courts forever.

It should be, I would submit, a fundamental, sound lawmaking practice that laws can be clearly understood. Heaven can never be

clearly understood because, as ever, one man's heaven is another man's hell.

2. It should be imperative that any law proclaiming and guaranteeing rights, should not equally create discriminations.

To start with, the bill obviously discriminates against those who may be accused of discriminating. The lack of legal protection in the bill is so well known that I won't have to go into it any further. The lack of restraint against frivolous complaints could create and has already created--there are examples in the press--in the operation of the current human rights legislation, discrimination against people who are the subject of complaints for no better reason than that someone wants to get away with something.

In limiting the age to people between 18 and 65, the bill obviously says that those older or younger than these magic numbers are nonpersons. I am rushing towards 65 in nine years time. Does that mean I am a nonperson at that age? The ladies who were here this morning, I believe, mentioned this. Does this mean a kid up to the age of 18 is nonperson according to the Ontario government?

What is most clearly forgotten by the supporters of this bill is that the various protections they claim in the bill can be used against them just as much as they can be used for their protection.

For instance, would a black, crippled woman seeking a companion want to have a totally unsuitable white male forced on her? According to that nondiscrimination law, she has to have that. She couldn't advertise for any other.

Would a women's organization want to open its hiring to males, even though the last thing they want might be a male? I sure as heck wouldn't want it, but some people might like it, the voyeurs.

It can all be said that these examples are ridiculous, but if the bill is passed, and applied even-handedly, these conditions must apply just as much as the reverse.

Some women, for instance, have been striking so-called blows for women's rights in recent times by insisting that women reporters be allowed into men's locker rooms or that girls play on boys' teams. This bill would obviously require the reverse conditions to occur. Now, are women going to allow men to come into women's locker rooms?

2:30 p.m.

I would suggest, too, that if you want to fight discrimination a man should promptly demand that the Dagwood comic strip be banned. Never has there been a comic strip that has made more mockery of the fact that a man is a man. Dagwood is the greatest wimp the world has ever known, leaving aside even political figures whom some people refer to occasionally as wimps.



I have got the fascinating situation in Ottawa of the press club. There was a men's press club until the women decided they wanted to have a joint press club. So they now have a joint press club. Then the women started a women's press club. But don't ask a man to join it; if you ask to join it, oh God, that's terrible.

One could go on and on with similar examples, and each one of them would be considered more ridiculous than the last by the proponents of the bill. They would probably also be considered ridiculous by the current human rights commission. But I think lawyers would agree that it would take only one appeal to the Supreme Court of Canada under this bill to reverse the approach.

If I took a case of female discrimination against a male up to the Supreme Court of Canada it would open the whole can of worms. They would say, "Under that bill you have to do it that way." Now, I'm not saying that it should be that way; I'm merely saying it is that way. You have got both sides of the can. Then, I would submit, many of the proponents of this bill would wish they had never thought of it.

What I'm saying is simply, again, that freedom is indivisible. Once you start dividing it up you open a Pandora's box, whatever your idealistic reason. I think there are problems with the previous human rights legislation on the same basis.

My third point really emphasizes one I made earlier: No act of the Legislature can hope for any success if it does not have the general support of the society for whom it is legislated. There is, to my mind anyway, absolutely no question that most people in Ontario do not want this bill. They don't even want the previous human rights legislation. Not only do they not want it; I would submit that most people actively dislike it--that is, among those who know anything about it. The vast majority of people don't know anything about it.

If this is the case, you ask, why isn't this coming through? The basic reason is the change in Ontario politics that has occurred in the past 30 years. Thirty years ago you gentlemen would have gone back to your communities. You had a power broker in each area. He ran the municipality and he knew what was happening. You would ask him, "Joe, what's happening?" Joe would say, "Look, we don't like this," or, "We do like that." Some things work that way.

Mr. J. A. Taylor: That's the way it operates in Prince Edward now.

Mr. Palmer: But I think that has died.

Mr. J. A. Taylor: Don't take that all in jest.

Mr. Palmer: I don't think even the downtown Toronto power brokers are listening too much now. We are now in what I call the age of the groupies. You name it nowadays and there's a group supporting it.

Certainly many of the claims by groups have a lot of

validity. However, I am very frequently concerned how extensive the constituency of these groups actually is. Far too often most groups claiming to speak for a major group such as women, blacks, et cetera seem to speak for a small activist section of the group.

I mean, for crying out loud, I know woman after woman after woman who says, "I don't belong to a women's group and I don't want to belong." One little lady came up and said: "I like being a mother at home. Write a column. No one will listen to me." Three girls promptly spoke up and said: "We're with you. We want to be at home with our kids."

This brings up the next point: The average Joe has all but given up on the whole political process. People whom you would have expected to be involved in the political process 20 years ago simply throw up their hands and say: "It's no good. I'm staying at home. Forget it. I don't discuss it."

We're going back to those people. When I first came back to Canada I went and stayed with friends of mine, a dear old Scottish (inaudible). And she turned around to me and said, "John, we discuss anything in this House but religion and politics." And the voice closed. We are going back to this among your middle Ontarians.

The committee has heard from a lot of people, I suspect. Practically every one of them claims something or demands some protection for some special-interest group. True, these are probably the only people willing to come forward. But when you get right down to the bottom how many of these groups really speak for the average Ontario resident?

I am here presuming that there is such an animal. I don't know if you can find him. Whether or not there is an average Joe I do think the term "silent majority" is becoming an increasing reality. Your hardest task, I am certain, is to see beyond the groups to the real wishes of your constituency, the people of Ontario.

Next I would pose the question that I think is crucial to the whole thing, to this generation and the next: How much more governmental regulation, restriction and control can our society take without strangling itself? I argue in class that I feel this is the issue of the next 50 years.

From the ancient Egyptians down to today the key symptom of a declining society is that the genius of the country becomes strangled by priestly or governmental regulations. And that is as true today as it was when the Egyptian empire died. We are almost at the point where every government regulation is another regulation too many.

What Bill 7 creates is a new group of governmental inspectors that looks suspiciously like a form of thought police. I am certain they were dreamt up with the very best of intentions, but, as ever, the way to hell is paved with good intentions. The minister responsible, the Honourable R. G. Elgie, says the powers of the thought police are not different from those of other law

enforcers. I would argue this: that two wrongs or more wrongs don't make a right. We have too many of these inspectors allowed to march into people's houses right now.

The supporters of this bill argue that the powers are needed because of the nature of the crimes being investigated. I was reading an article by Mr. Borovoy on this. Since when is possible discrimination worse than murder? The police do not want any part of the extra powers, and I can assure you there isn't a person I have talked to who thinks that power is valid, except Mr. Borovoy, and I am very suspicious of him. I initially thought his appointment and his ideas were excellent, but now he seems to follow his own little particular trail, and anything that diverges from it--forget it.

Some groups supporting this bill and those asking for increased special rights seem to think that their rights need greater protection than those of others in Canada. Everything that happens to them is nasty, put down to racial or sexual reasons or some other factors found because they are different. Certainly recent immigrants are beaten up, but so are others who have no racial difference from the majority.

Certainly police sometimes shoot the wrong person, but you may remember that there was a major outcry a number of years ago, before there were a significant number of nonwhites, about the police using their guns too frequently. As a result of the outcry there is police training and instruction and things happened. I remember this back in about the 1950s when we had about a dozen people shot in Toronto in one year.

But people seem to forget that as long as people have guns--I said police there--and have to use them, as the recent tragic events have exemplified, some people are going to get shot. Turning an incident where white policemen and a nonwhite civilian are involved into a racial incident may occasionally be correct, but it smells far more of political opportunism.

For instance, right now in this recent incident in town let's say there had been two white policemen and the person involved in the struggle had been a black. You wouldn't be able to come in here for a demonstration. It would be police brutality against the blacks, because certain elements seem to think this is an excuse for it. I was terrified when I saw it. I said, "Oh my God, if he's black or if he's white or if the wrong mixture is there we're in trouble."

Certainly Ontario authorities appear far too ready to use instruments of the law to enforce a morality that often appears ridiculous. Few places in the world have more ridiculous liquor or censorship laws than we have. That is in the civilized world; you can take this fairly loosely, I think. Mind you, as I point out later I think we have improved considerably on our liquor laws.

I have often felt that this province is the last home of the Puritans. But, for instance, for homosexuals to claim that they are being discriminated against because of this Ontario tradition is ludicrous. We were discriminated against, if you remember, back



in the 1930s. If you wanted to drink in the pub you either took it with you or you drank it on the spot. That was discrimination against drinkers.

While I am the first to agree that homosexuals have the right to privacy in the bedroom--I refuse to use the word "gay" to describe them, because most I have met strike me as miserable, and this was with the best of intentions; I object to the destruction of a formerly excellent English word--or that the state has no place in the bedrooms of the nation--this is one thing on which Mr. Trudeau and I agree; there are very few others, but that's one thing on which I really agree with him--I am the last to agree that they have the right to force their peculiarities on the rest of society.

Anyone has the freedom, to my mind, and I know them: They work in society; no one bothers them; they live there. Why shouldn't they? But I don't think they want to insist that they be treated within society as something special. I don't expect to be treated specially. This society is based on the heterosexual structure; it always has been, and I don't think you're going to change it. But I don't think another group can say: "We've got a peculiarity. We've got to be special."

2:40 p.m.

To return to the main point: We have criminal laws, laws on libel, laws on this, laws on that; while none of them are perfect they are designed to apply to all persons equally. And while the laws are not perfect, neither are the people enforcing them. But attempting to resolve these problems of imperfection by creating new laws that discriminate and try to create nondiscrimination is just creating a new mess of imperfections. The answer, as always, is to apply what we have more perfectly and not to create a new mess of laws that simply confuse and confound the average citizen.

The frightening thing to me about this whole exercise is that a citizen such as myself finds it necessary to sit here in front of people who are supposedly dedicated to protecting the freedoms of the society I live in and to try to explain such a basic fundamental as the freedom of the individual. I am left with a sinking feeling that the old adage is coming true: when you have to explain a formerly fundamental idea to a society that idea is already dead.

Even the authors of this bill must admit that we have in Canada and within this province one of the freest societies in the world. We have rights and freedoms that go back a thousand years and should be understood by all, and yet we have politicians, pressure groups and individuals lining up to support a piece of legislation that, to anyone who knows George Orwell's writings, smells very much like the concept of 1984--and this is only 1981. I am afraid this is the way it looks to me.

From the political perspective we have had a frightening exhibition in the past week of just how poorly our traditions are understood by both federal ministers of the crown and ministers of the crown for this province. If Mr. Wells and Mr. McMurtry do not

understand the fundamental concepts of common law precedent and the generosity of spirit necessary to make our country work, how can we expect recent immigrants to understand these principles?

What seems to be forgotten is that our system of law was for centuries based far more on precedent and custom than on strict statute law. In fact, statute law did not really start to make any headway until the eighteenth century. I would remind these ministers of the crown, since they obviously appear to have forgotten it, that if the strict letter of the law were followed they would be in office by grace of the Lieutenant Governor and not by virtue of their support in the Legislature.

I should also point out that I am annoyed as a teacher, because they have made a damned liar out of me. For years I have argued that precedent is the basis of Canadian law, and I teach that in school regularly--the precedent going right down to the law. We have the question of the year and a day as far as street widening to this day. That is the basis of our law. They make a liar out of me in one statement.

Now, I recognize that the history of this country is all too frequently far more noted for mean political knife-twisting than for political generosity, and I've seen it myself. I would remind those who are in favour of this bill that however much they may think such a bill will protect people, given the pettiness of political life at times in Ontario, the actual application of the law could be far, far worse than no law at all.

Then there is the matter of those put in charge of enforcing rights. At present it seems to be fashionable to believe that unless a person is from a so-called minority group the person in question cannot be expected to understand rights. One of these people, Dr. Bhausahab Ubale of the Ontario Human Rights Commission race relations commission, seems to think that it is his function to censor newspapers. Does this bill, section 12, mean that if the bill is passed Dr. Ubale will censor instead of just advising?

Surely Dr. Ubale should realize that banning something you don't like, like the Ku Klux Klan or discussion on it, which is not criminal, does not create rights; it destroys them. Again, you can't divide freedom up; freedom is indivisible.

There is the matter of the letter in Monday's Globe and Mail from a number of very prominent religious figures supporting Bill 7. The result is that we now find the bill supported by a sort of unholy alliance of ideologues who seek perfection on this earth and the clerics, who are supposedly there to point man to a perfect life in the next world and who now seem to want to legislate him to freedom in this. True, with the best will in the world they all mean well. But surely they should be aware that the same can be said for every religious dictator right down to the ayatollah in Iran. True, the parallel is extreme, but so is the bill.

Now, I'm not saying that the most worthy clerics or anyone else cannot state the type of society they think we should live in. But saying that we should all be forced to be good or

legislated into a straightjacket, for goodness sake, only indicates that they feel that because they cannot persuade people to be good through their sermons, et cetera, the only alternative is to legislate them into a state of grace. I wonder if they should advertise their failure so extensively.

Now there is the little person, the average Joe, who feels that he or she is discriminated against. Many people seem to think that this happens only if you are a member of a minority group of some nature. Everybody is discriminated against.

I'm going to rush on here if I may.

The Ombudsman. We had an ombudsman to resolve everything. Where is he? Is this going to replace the Ombudsman? We have enough commissions to protect people and save everybody from everything. Certainly, there are things the laws cannot touch, but it seems to be forgotten that this is the case for everybody, not just for those who come from so-called minority groups. Practical problems the state can cure. You cannot cure ideals.

Another aspect of the bill--and I would emphasize this--it is importing American failures. Few have experimented with such courage as the Americans have in ideas to better society. They deserve every credit for their courage, but surely their experimentation should be used by this hesitant land more intelligently.

For some totally unknown reason, whenever the Americans fail at something, we import it. In education, we keep importing American ideas like they are going out of style just as the Americans decide they are of no use. We are doing the same with this affirmative action program.

Mr. J. A. Taylor: Because they are free.

Mr. Palmer: Yes, I guess so. There is every indication that what a lot of these programs do is create reverse discrimination. Claire Hoy has a column on this today. I agree with him. It's reverse discrimination, whatever way you like to put it, because it says, "A man qualified for the job cannot get it because we are going to bring in so-and-so." That is reverse discrimination.

What the proponents of the bill fail to recognize is the degree of change that has occurred in the attitudes and practices of this province over the last 30 years. For God's sake, we have improved. Remember back 30 years ago, we used to have to drink beer in a dungeon that looked somewhat like Sing Sing. You couldn't drink beer on your front porch. We accept people's quirks, homosexuals, women's rights, things like this. They have been accepted. Life has changed. Life is a new ball of wax in this province. We have become relatively civilized.

It amazed me coming back from England to find the levels which I felt from a kid in Toronto were not there because of our restrictive mentality. This has changed. All this is going to do is put us back steps. I find it amazing that we have a government



who not long ago won an election on the basis of "No more aid to Roman Catholic schools," talking about equal rights in supporting a bill which, even though mistaken, is an idealistic attempt to attain equal rights.

But, in the end, what is needed is not more legislation. We have too much of that now. What we need is more civilized behaviour--I emphasize the word "civilized"--a more gracious understanding by everyone of the peculiarities of others, and above all the refusal by government of powers which belong to the individual. I would emphasize the belief that we have to have governments that say, "We don't want that power because that belongs to the individual." That to me is the most crucial thing.

I am going to skip the rest because most of it is straightforward. I want to finish up with one story and I want to make two points, if I may.

The people who built this country built it as a place to grow in, a place to plant their feet in, a place to support their freedoms. If you had told a soldier who went to fight in the First or Second World War that they would have to have a bill of rights to guarantee freedoms in this country, he would have laughed at you and said you were sick.

People who came here didn't bills; they didn't need rights; they didn't need charters; they didn't need all kinds of the rest of it. History teaches us one thing. A truly free society only exists within a society which has the courage to insist on being free, and has the civilized restraint--I emphasize "restraint"--to understand the limitations of that freedom.

I am going to go back to my Oxford days, if I may. I will tell you one little story. I am sorry I have taken up too much of your time.

Back in those days--I suppose they still do--the Fascists and the Communists arrived in Oxford every so often. I think they were trying to get a newspaper incident. They set up a loudspeaker and everything else going on. The Fascists, with their usual wont, always had more efficient and more expensive loudspeakers than the Communists. I don't know how they managed it; they certainly have been defeated.

A few of us used to go out and heckle. It was lots of fun. I decided if they were collecting money, I would collect too. I went to The George, a pub down the road, and picked up a box for the RSPCA and came collecting. I promptly was met by the policeman who looked at me and said, "Excuse me, sir, you cannot collect." I said, "Well, he's collecting." "Oh," he said, "sir, he has a permit." I said, "You mean the RSPCA hasn't got a permit to collect in this country?" He said, "Well, sir, it is this place."

All right, so I took it back. The next minute I came back and up came the bullers and the proctor, all dressed in white tie, tails, gown, everything else. One buller purportedly can run 100 yards in 10 seconds and the other is an all-in wrestler. They were wearing their bowler hats, and one came up to me, tipped his hat

and said, "Sir, are you a member of this university?" I said, "Yes." "Well, the proctor would like to speak to you."

2:50 p.m.

I went to see the proctor. He tipped his cap and said, "Sir, are you a member of this university?" I said, "Yes." He said: "Name and college please. Go back and see your dean." As I lived out, it didn't make any difference.

Eventually I got the most polite invitation in the world. The chief proctor would request the pleasure of Mr. Palmer's company at a certain time to discuss certain matters. So I went around, put my cap and gown on the table and sat down. He said: "Ah, yes, Mr. Palmer, present problems. Yes. Fascists and all that kind of jazz. You know, we would all like to throw these chaps into the Thames, but you know that is what we fought the last war for. Freedom. Fined three guineas."

So I walked out, and I was telling somebody about this afterwards who said to me, "Do you know who he was? I said, "No." He said, "Do you remember the 50 RAF officers who were shot?" I said, "Yes." He said: "Well, he was one who wasn't shot. He spent over a year or so in a concentration camp."

Now if he understands freedom that well, how much more should we? That is my basic point. Freedom requires perpetual vigilance. As one citizen, I attempted through the courtesy of your committee to exercise my vigilance. Sorry to have taken so long. Thank you.

Mr. Sheppard: I like your sense of humour.

Mr. J. A. Taylor: What about his sense of proportion?

Mr. Chairman: Thank you, Mr. Palmer.

We are a little pressed for time. Are there any questions? I think you made your point very succinctly to us. We thank you for taking the time, sir.

Mr. Palmer: I apologize for taking so much time.

Mr. Chairman: I am trying to get news on next Tuesday for you. I hope I have that before we adjourn today. We had a little difficulty, as I indicated this morning. Also, if anybody has any questions he wishes the lawyer for the human rights commission to have before he appears next Tuesday, if those are left with me, I will see they are sent over to him. Some had suggested that. I have a couple from Mr. Renwick, and Mr. Johnston.

The next speaker is Michael Arkin.

Mr. Arkin: Good afternoon. I would like to thank you for giving me the opportunity to appear before this committee today. As you all did, I heard the remarks of the gentleman who spoke just before me. While I am sure we all appreciate his sense of humour and we like to be able to laugh, I think it is important

for all of us to remember that the deliberations of this committee are going to have a significant effect on the lives of people all across the province.

If I may--I hadn't planned to do this--I would like to read the remarks of a government member as recorded in Hansard. Then I will tell you who the member was and when he spoke.

This government member said: "The cardinal principle of the inviolable dignity of every human being animates the Human Rights Code. This government's legacy in human rights enforcement will be maintained and disharmony will not be allowed to take root, nor will persons seeking to foment disharmony be tolerated in Ontario. The rights of minorities to protection from discrimination so that they may make their full contribution to a flourishing community will be assured.

"In keeping with this philosophy, I believe that there must be a continuing review and strengthening of the Human Rights Code to ensure its relevancy to the conditions as they exist in society today. The Ontario Human Rights Commission will also be taking new initiatives in the enforcement of human rights and in government programs."

This speaker spoke in the House on Thursday, June 15, 1972, the tenth anniversary of the proclamation of the Ontario Human Rights Code, and the speaker was the Premier of the province, William Davis.

There are four things I would like to discuss with you today. I would like to tell you a little bit about who I am and why I am here. I would like to talk about some myths and I would like to talk about some problems.

As I said, my name is Michael Arkin. I live in Toronto. I was born in Ontario. I have lived here for most of my life. I went to school here. I went to public school in Toronto. I went to high school in what was then the borough of North York. I went to university in Hamilton. I went to Carleton University. With the exception of a short time when I was studying abroad in France, when I lived in Paris studying at the Sorbonne, I have spent my whole life here in Ontario.

I worked here at the neighbourhood Y as a volunteer when I was younger; I worked as a camp counsellor. I worked at McDonald's down the street selling hamburgers. When I graduated with my first degree in psychology, I worked for the Ministry of Health in a treatment centre for adolescents in Toronto.

I am appearing before you today as a citizen of the province, someone who wants to speak his mind. In many ways I am the same as all of you here. I live in Ontario because I choose to live in Ontario. I happen to have been born in Ontario. I suspect that all of you were not born in Ontario. We might be different in that way. Some of us were born here, some of us were not, but we are the same in that we all choose to live here.

There are other ways that I am the same as members of this



committee and ways in which I am different. I am different perhaps because I am left-handed. I have not seen all of you write. Richard has just pulled out his pen, he has just shown me. About 10 per cent of the people in Ontario are left-handed. Ten per cent of eight million people is about 800,000 people. I have not seen you write so I do not know what percentage of you are left-handed.

I am perhaps different from you because I have blue eyes. I cannot see that well, but you certainly do not all have blue eyes. Again, in Ontario about 10 per cent of the people do have blue eyes. Again, that is 800,000 people.

I am different from you also because I am a homosexual. Some of you on this committee are homosexual and some of you are not. Again, about 10 per cent of the Ontario population is homosexual. There are about 800,000 gay women and men in this province.

So in some ways I am the same as members of this committee but in other ways I am different.

I know it must be difficult for the members of the committee to discuss some of the issues which have been raised. Many people I know have come to talk to you about questions of sexuality or sexual orientation. I appreciate and I have sympathy for your position, because I know those are difficult topics to discuss in public. At the best of times, sex or sexuality are difficult things to discuss with our friends or just with our families.

To discuss them here in the Legislature in front of colleagues whom we may or may not know very well, in front of spectators or other deputants whom we may never see again, in front of the media, in front of our constituents, is not easy because these are difficult issues to talk about. But this is one of the tasks this committee has.

I need not remind you all, as elected politicians, when you first undertook to run for office, you knew there would be things you did not want to do or would not like to do, but you had to do them because that was part of being a responsible member of this House.

3 p.m.

I am here today, as I am sure you realize, to urge your support for the amendment of Bill 7, an amendment which the member for Hamilton Centre (Ms. Copps) has told you in the House and in this committee that she will propose, an amendment which the member for Scarborough West (Mr. R. F. Johnston) has told you he and the colleagues in his party will support and, in fact, an amendment which many members on the government side of the House have said privately that they would support.

If Bill 7 is amended to include sexual orientation in that clause which lists the grounds of discrimination which are prohibited, I do not expect that the world will change very drastically. I do not think that gay women and men in the province of Ontario will find a radical difference in their lives. In fact,

I do not think there will be a radical difference in the lives of anyone in Ontario.

In Quebec, I believe it was in 1977, they changed their charter of human rights and freedoms to include sexual orientation. I have not heard anyone suggest that because of that the nature of Quebec society has changed drastically at all.

But I think it is important nevertheless that you do include sexual orientation in Bill 7, when you send it back to the House. I believe it is important as a statement of public policy. It is important that this committee and the Legislature of Ontario send a very clear message to people all across Ontario. The message that not only is it the public policy as stated in a speech or in the preamble to a code, but it is public policy in Ontario that all people are equal in dignity.

That is not a very difficult concept for most of us to accept in the general case. Equal in dignity, it's hard to argue with that. Some people try to argue against that by talking about special rights, that certain groups are arguing for special rights.

I would say to you that the inclusion of sexual orientation in Bill 7, and ultimately in the Human Rights Code, is just the first step in working towards ensuring basic civil rights, basic human rights for gay women and gay men in this province. It is only the first step towards insuring that gay people in the province are treated in the same way as others, not in any special way; that gay people be allowed to rent apartments in the same way everybody else does, or that they be allowed to hold jobs in the same way as everyone else.

I have the opportunity to speak before this committee today and, with the consent of my employer, I have taken one of my vacation days today, so that is why I am not at the office today. I am a management consultant. I work just down the street at the foot of University Avenue.

If my employer were to find out--he did not ask why I wanted the day off and I did not volunteer. My employer has a policy of not inquiring into the private lives of his employees. He is concerned about the work people do on the job. I appreciate that. But, if he were to read in the newspaper today or if one of the spectators in the gallery here today happens to know my employer and mentions to him: "I saw Michael Arkin at the Legislature today and he announced in the standing committee on resources development that he was a homosexual and he was speaking for the amendment to the code. Would you consider it appropriate?" Would you want this to be the kind of Ontario where my employer could say to me tomorrow when I come back from my one day vacation, "You are fired because you are a homosexual"?

I am talking to you today to urge your support for this amendment because I believe, and I hope that you believe it would not be right for my employer to say that, to fire me because I am a homosexual and for no other reason. I do not consider that to be a special right, I consider it to be a basic right that, as Mr.

Davis says, I be able to contribute to the flourishing of the community, that I be able to hold my own and work. I do not think there is any member of this committee who would argue that it is a special right to be able to work. All the members of this committee know we all need to work to support ourselves and to support the community.

I have told you who I am and I have told you why I am here. One of the other things I would like to talk about, as I said earlier, is the question of some myths. I would like to discuss some myths which people seem to talk about a lot whenever we talk about amending the Human Rights Code, not that it happens all that often in Ontario, but whenever we talk about human rights, and especially when we talk about human rights for gay people.

Before I get to the myth that we speak of when we talk about gay people, I would like to talk about another myth which has a long historical antecedent. This is the myth which is called "the blood libel."

I am sure most of you know every year around Easter time, Jews celebrate the Passover. The Passover is the celebration of the exodus of the Jews from Egypt. It tends to be a joyous time for Jews, the celebration of the Passover, but for many years--not so much in the last little while, not in the last 10 or 20 years, but in the years before that, and that is not all that long ago--Jews had to deal with something that they themselves call the blood libel.

The blood libel is very simple. The blood libel said that at the Passover, Jews did not drink wine at the table, they drank the blood of Christian children.

In 1981, to sit in the Legislature of Ontario and to suggest in any serious way that anyone would now believe that Jews drink the blood of Christian children every year around Easter time is patently absurd. No one will give that any credence. But 10 or 20 years ago that was not so much the case, and 100 years ago in this province that definitely was not the case. There was a great deal of credence.

If we look back in our history, if we look back to the history of the Jews in Europe and if we look at the Passover we will see for a great many years, for scores and scores of years, Jews drank white wine at Passover because that was their only way to attempt to defeat the blood libel. They drank white wine and no one could say that was the blood of Christian children.

The blood libel was a myth. It was a lie perpetrated against the Jews. It was a libel which was spread as Jews came to be seen more and more in the everyday community. It is a myth which was prevalent here in Ontario when Jews came to be seen to be more numerous and more active in the general community.

Homosexual women and men in this province suffer under a similar libel. It is the myth of child molesting. Whenever the discussion of homosexual rights, basic human rights for homosexual women and men is raised in this province, someone says, "What



about the children?" They do not say, "What about the blood of the Christian children?" They say, "What about the sexual molesting of children?" So I would like to talk to you today about the myth of sexual molesting of children.

If we are concerned about the sexual molesting of children, let us talk for a minute about what we mean by sexual molesting. We are talking about adults, majors, people over the age of 18 who either rape someone under age--no one would argue that rape is sexual molestation--or who expose themselves in front of children, or who touch the genitals of children. We would say that these are people who are sexually molesting children. If we are concerned about people who are sexually molesting children, then naturally we are going to try to prevent that molestation from taking place.

Let us take a look for a moment at the experience in Ontario and in other jurisdictions and see who it is that molests children. The first thing we see when we look at the statistics is that there is not equal treatment of girls and boys when it comes to sexual molestation. Overwhelmingly, it is girls who are molested and not boys. In fact, statistics show about three to one. For every one boy that is molested, three girls are molested.

3:10 p.m.

Let us talk about the girls first. Who are molesting little girls? As you might expect, it is not women who are doing it. The incidence of sexual abuse or sexually-related violence of any kind perpetrated by women is negligible. Their count in the statistics is practically nil. For all intents and purposes we can just dismiss the consideration of women; they just do not do those kinds of things. So when we are looking at the molestation of girls we are looking at the molestation of girls by men.

Police statistics, court records and the records of social service agencies show that 96 per cent of the men who molest girls are heterosexual. They are married; they and their wives describe their marriage and their sexual relationships as good, and more often than not they have children of their own. The remaining four per cent are, in fact, homosexual men.

Let us look at the molestation of boys. Surprisingly, the statistics are the same; 96 per cent of the molestation of boys occurs at the hands of heterosexual married men with children. That is a surprising statistic. It is certainly not one you would expect to hear. It is not one you would expect would be borne out by police records, or by sociological studies, or by reports of children's aid societies across the province.

If you think about that you say that it is reasonable there should be more molestation of boys by heterosexual men because there are more heterosexual men than homosexual men in the province. That is very true.

The generally accepted figure now and for the last 10 or 20 years of the incidence of homosexuality in our population is 10 per cent. I said to you earlier that I am one in 800,000. I am lefthanded. I have blue eyes and I am a homosexual. Ten per cent

of the men in this province are homosexual but they only count for four per cent of the molestation of children. Heterosexual men, nongay men, account for 96 per cent. That is much more than their incidence in the population would allow.

So I say to you, in the same way that we cannot accept the blood libel perpetrated against the Jews, that the Jews drink the blood of Christian children, we cannot accept the blood libel that homosexuals, especially homosexual men, molest little boys, because it just does not happen.

If you want some confirmation of these statistics, each one of you has in your caucus researchers, you have a parliamentary library, you can ask either the Solicitor General or the Attorney General--it would be easier; it would only take one letter--and you can find out for yourself that these are the statistics as borne out in this province.

Besides the myth of the libel, if you will, that homosexuals abuse children, I want to talk to you about the other side of that coin. I want to talk to you about the protection of children. Not the protection of children from sexual abuse but, rather, the protection of students in schools. That is often another issue which is raised when people talk about homosexual rights.

I want to talk to you about the protection of homosexual students, of gay little girls and gay little boys in public schools and in the high schools of Ontario, because no one on this committee should make the mistake of thinking that there are no gay students in Ontario schools.

I went to school here in Ontario, and I was a gay student. We all went to school somewhere, and the 10 per cent of the population, the 800,000 gay women and men in Ontario went to school here too. They were gay students.

Mayor Eggleton was here not very many weeks ago. He presented the brief of the city of Toronto. In that brief the city council had included its further endorsement, almost 10 years down the line, of the inclusion of sexual orientation in the Human Rights. Unfortunately I was not here when Mayor Eggleton presented his brief, but I did read it in the Globe and Mail. At least the headline in the Globe and Mail was, "'Don't Flaunt It,' Eggleton's Advice To Gays."

As I understood Eggleton speaking, and if I were to draw parallel again with the Jews, again with the blood libel, what Eggleton was saying was that gays in the schools should not flaunt it, because of course there are gay teachers and gay principals as well as gay students.

If we were to talk about Jews in the same way, we would say it is okay for Jews to be Jews to hold their beliefs in their heads. It is okay for them to pray in their private places where we cannot see them, but if in a classroom a Jewish teacher is teaching a subject and a topic should arise that has to do with values, morality or history, should that Jewish teacher not say: "In my house we do things this way because I am Jewish; I keep a

kosher house," or, "I do not celebrate Christmas, I celebrate the Passover"? Would we say that Jewish teacher was flaunting his Jewishness? Would we say that?

I would like you to think about this parallel, because I think they are just the same. When you are saying that it is all right for gay people to be gay people as long as they keep it to themselves and they do not flaunt it, you are forgetting the fact that most people do, as you do, want to keep your sex life and your sexuality private. But it is the public institutions, it is employers and landlords who make the question of sexuality a public one.

When I met my employer for the first time when I had my interview before I was offered the job I did not say: "How do you do. My name is Michael Arkin. I am a homosexual." That is not germane. Why would I discuss that with my employer?

But if he were to see on my resume that I was active in a gay activist group; if I were to be so foolish to put such a thing on my resume, then he could easily discriminate against me because of my homosexuality. I did not flaunt it. I did not make an issue about it. I did not discuss it when he had the interview with me. He brought it up. He made it a public issue.

I told you that I thought support for sexual orientation in the code will not make a radical change in Ontario society, but it will be important as a statement of public policy. I have talked a bit about the libel that is perpetrated against gay women and men in the province, the method of sexual abuse. I have talked only briefly about the protection of gay students and gay teachers.

I hope to be able to answer for you some questions that you might have. I know you have all been very patient because you have heard a great many deputations here. You have read a great many briefs. I well understand that this is not a committee that is used to dealing with social legislation of this type. I think that everyone who has appeared before you appreciates your patience and the time you have taken to hear all sides. I am sure that in the many weeks you have been taking deputations, questions have arisen. If I can I will try to answer some of them for you.

I would like to finish up my deputation now by reminding you that there are many people across the province who are watching very carefully what is happening here in this committee. They will watch very carefully when this committee reports to the House, when the House meets in committee of the whole, and when the Legislature finally votes on Bill 7 and finally votes to amend the Human Rights Code.

I understand that the clerk of this committee received today, I do not know the exact count, somewhere in the vicinity of 150 telegrams from people all across the province urging you, the members of this committee, to support the inclusion of sexual orientation in Bill 7 and ultimately in the Human Rights Code.

3:30 p.m.



So I would remind you that there are people watching, and the people who are watching will not forget. Many of those people have been here before; they have been here now, and they will be here again if it should happen that you do not amend the code.

I want to thank you for your patience in hearing my deputation, and now I would be more than happy to answer some of your questions. I heard at the beginning of my remarks some grumbling from the government side of the committee and if there were some questions or some objections, I would be pleased to deal with them.

Mr. Chairman: Thank you, Mr. Arkin.

Mr. Sheppard: Mr. Chairman, I guess I was one of those from the government side.

The only comment I have got to say is that I do not like to be accused of being homosexual, that is all; just a comment.

Mr. Arkin: Mr. Sheppard, I was not accusing you of being homosexual. I was rather surprised when I saw that Bill 7 was in fact referred to this committee, because I happen to know as a matter of fact that there is a homosexual member of this committee.

I certainly am not going to be the one to drag this member out of his closet. Lord knows that in the province of Ontario he would have had very little recourse if he were expelled from his caucus or he lost his job because he was a homosexual. So it is not my place to wrench open the door of anyone's closet, but I would not for a moment want you to come away with the mistaken impression that there are no homosexual members of this committee, and that there are no homosexual members in the Legislature--or for that matter, that there are no homosexual members of the cabinet.

Do not forget that there are 800,000 gay women and men in this province, and these gay women and men are everywhere.

Mr. Chairman: Mr. Riddell, you had a question?

Mr. Riddell: Yes, I should like to return to your own personal example. If your employer was to learn that you came down to this committee and proclaimed that you were a homosexual and active in the gay community and what not, he may well fire you; would he fire you? In your own honest opinion, if he learned that you were down making this kind of a presentation, are you apt to walk into the office tomorrow to be greeted by him saying, "I am sorry, but I no longer want you in my employ"?

Mr. Arkin: Mr. Riddell, it is hard for me to answer that, because I do not know.

I am sure that some of you remember that I have been here before this committee before. I was here on the first night of hearings, helping to present the brief of the Coalition for Gay Rights in Ontario, and at 10 o'clock that evening, I stepped

outside with the member for Scarborough West, and we were interviewed by the reporter from City TV, and that report went out live that evening. It was a report on the committee receiving the bill and I do not know who watched that. My employer may well have watched that. He may know that I am a homosexual. I do not know what he is, we have never discussed it, and he has never asked me.

Until the crunch comes, I do not know. I can point out to you the example of John Damien. I am sure you have heard his name before. He was a racing steward for the Ontario Racing Commission. For those of you who do not know, a steward is a judge; he is the person who says which is the horse that won and which is the horse that lost.

John Damien had spent his whole life working at the track, working for the racing commission. He was rated by the commission as one of the best stewards in North America. However, when the chief of the commission found out that he was a homosexual, he was fired, and he was fired for that reason. If you look in the Globe and Mail, you will see the quote, "So-and-so"--I have forgotten his name--"head of the commission, says John Damien was fired because he was a homosexual and we didn't want him around."

So if the question you are asking me is, "Is there such a thing really as discrimination; do employers really care whether or not you are homosexual?" the answer is undoubtedly yes. You will have the pleasure in a few minutes of meeting some women who have come down from Thunder Bay, and they will be able to tell you their own stories about discrimination in fact.

Mr. Riddell: I am sure we can quote examples--

Mr. Arkin: North Bay, excuse me.

Mr. Riddell: I am sure we can quote examples for any point we want to put across, and I have raised this matter before, that I would think that a majority of the homosexuals would be in the same position that you are--that their employer looks at their work, and does not look at what their particular lifestyle is. And you will come back and you will say, "Yes, but if there is discrimination against even one homosexual, that's too much."

But we can leave the sexual orientation and probably go on to many other examples where there is discrimination, and quote examples which do take place, granted, but not most of the time.

Mr. Arkin: Mr. Riddell, we are dealing with a difficult area always when we are talking about discrimination. How does a woman prove that she has been discriminated against when she applies for a job and she is fully qualified, but a man is hired and not her? How does she prove this is the problem?

You will hear from the human rights commission itself when you meet with its members next week, how does anyone prove discrimination? It is very difficult. An employer knows the real reason, and only the employer knows; and only the employer knows whether in fact the two people were equal, and whether he or she, the employer, wanted a man or wanted a woman. No one can tell.

It is harder to prove discrimination on the basis of sexual orientation, because in the same way that perhaps you did not know that one of the members of this committee is a homosexual, most people cannot tell who is a homosexual and who is not; and it is hard to prove discrimination.

But you take the case of someone who has on his resumé his work, or you take the case of a lesbian who has custody of her children, and it is hard for those people to fight for their jobs.

I happen to be in a very fortunate position. I have two university degrees; I have a professional job; I happen to be in computer science where there is a great demand. In my field I do not think people would care if you hang from chandeliers in the neighbourhood bar, because they want computer-science people.

If you really believe that the vast majority of the employers in Ontario could not care less about the sexual orientation of their employees, then you should have no difficulty in supporting your colleague's amendment to include sexual orientation. To your view it might be redundant, but to the view of most of the 800,000 gay women and men in this province, it is very important.

Mr. Riddell: Well, you are assuming that you are speaking on behalf of 800,000 people. If I was to be able to sit down and talk with every one of them, I bet you it would be a very small portion of that number who would tell me that they have been discriminated against because of their sexual orientation, whether it was in employment or accommodation or what it was.

You are assuming you are speaking on behalf of these 870,000, but maybe 800,000 of those are quite happy with the way things have been in their life. How do we know?

Mr. Arkin: Well, we are talking about two things here. Let us talk about the question of--

Mr. R. F. Johnston: There is the question of race as well, or handicap or--

Mr. Arkin: Pardon?

Mr. R. F. Johnston: Wouldn't that apply to race or handicap as well?

Mr. Arkin: Well, yes.

Mr. R. F. Johnston: Yet they are in the code.

Mr. Riddell: We have heard presentations to that effect too, that--are we making a bigger problem than the one that really exists? Are we blowing this thing out of proportion?

Mr. Arkin: Let us talk about the two issues. One is the question of representation, and one is the incidence of discrimination in any community.



Let us talk about representation first. Let me ask you, how many constituents are there in your riding?

Mr. Riddell: Fifty-eight thousand.

Mr. Arkin: Fifty-eight thousand? Okay. I shall not ask you how many people voted for you on March 19.

Mr. R. F. Johnston: Almost all of them.

Mr. Riddell: All of them.

Mr. Arkin: Okay. Well, perhaps you are an unfortunate example for my point, but good for your cause and your party.

We all saw the results of the recent by-election in Spadina and we saw the very narrow margin by which Mr. Renwick's and Mr. Johnston's new colleague from the federal caucus won that seat.

We accept without question that when that new member for Spadina, Mr. Heap, speaks in the House of Commons, he will speak for Spadina riding, and even if he only had a majority of whatever it was, 307--whatever it was--no one is going to question that he is the representative of Spadina, in the same way that I have seen it written in the press that more people voted against the current government than voted for it. However, no one questions that this government is the government of Ontario and that when the government speaks, it speaks for Ontario and that when the Premier goes to Ottawa, he speaks for Ontario. Not everyone voted for him and not everyone agrees with the politics of Mr. Davis or of his party; however, he is the representative.

3:30 p.m.

The gentleman who spoke before me talked about that. He said, "I have met lots of women who are not members of feminist groups." Even the party that has a majority in the House--not everyone is a member of the Progressive Conservative Party; I know you are working on it, but not everyone is a member--not everyone comes out to your constituency meetings, or is a member of your party or contributes funds. However, no one is going to question that Mr. Sheppard represents his riding.

That is the way it is done. Not everyone is active in partisan politics. Not everyone is active in the women's movement, and not everyone is active in the National Black Coalition or the Canadian Jewish Congress or the Coalition for Gay Rights in Ontario.

In any community, whether it be the political partisan community, the black or the Jewish community or the gay community in Ontario, there are people who speak on behalf of those people. They speak on behalf of the gay women and men in the province who are afraid of losing their children, or afraid of being evicted, or afraid of losing their jobs.

If you read our brief, if you have listened to some of the deputations of other people, if you look at the story of John

Damien, you know without question that there are many people in this province who have been discriminated against actively because of their sexual orientation. There is no question about it.

If you were to spend your next three lifetimes interviewing all the 800,000 gay women and men in this province, you would find that most of them have not been discriminated against. Why is that? Is it because they knew they dare not say anything because otherwise they would be discriminated against?

If you go into Mississauga and talk to most women there, will they tell you they have been discriminated against in looking for a job? Probably not. But how many of those women have looked for a job? Of the women who do actively seek jobs which have equal pay and equal benefits and equal responsibility with those jobs given to men, how many of those women will tell you they have been discriminated against?

Mr. Riddell: I just had one other question. You know what the separate school board stand has been up to the present time, that they hire on the basis of their own beliefs and their own moral behaviour and things like that. They made that amply clear to us. Now, if sexual orientation is included in the bill, that means that the separate school boards can no longer follow the doctrine which they sincerely believe in; this is their religious belief.

To give you people the rights which you want in this bill I suppose is taking the rights away from the separate school boards who are hiring teachers. How do you reconcile that? How do I go to a separate school board and make a speech to them and say, "Yes, I was one of those who strongly supported the inclusion of sexual orientation in the bill"? My God, I think they would run me out on a rail, wouldn't they? They would likely say, "You have taken my rights away."

Mr. Arkin: You are using an interesting metaphor that somehow rights are being balanced; to say that everyone in the province is equal in basic rights, is equal in dignity, somehow makes some people less equal than others.

If there were a separate school board in your riding----

Mr. Riddell: Which there is.

Mr. Arkin: Of course there is. But if there were one which held as its honest and true belief that black people were unqualified to be teachers, would you say to them, "If this black person is the most qualified person, you must hire that person, you may not discriminate against that person"? Would you have trouble defending that?

Mr. Riddell: It is kind of a ridiculous example because I am sure there are lots of black people who are Catholic. Why would they go against their own people?

Mr. Arkin: Far be it from me to try to reconcile the complex within Christianity. The gentleman who spoke before me

mentioned Ireland. I think that is a case in point. They are not Christians who are fighting one another.

I am not trying to say that there is a school board in your riding which holds that view, but if there were, if that was their honest belief, because that is what you are talking about, that they honestly hold that belief, that is their value, would you be able to tell them that they cannot discriminate against black people? That is the question.

Mr. Riddell: But the truth of the matter is that they do hold this belief about sexual orientation.

Mr. Arkin: There are many people in Ontario who honestly and truly hold the belief that black people are inferior. That is a belief which is held by people. Are you prepared to tell them that they may not discriminate? Or are you prepared to say if you honestly hate someone and are honestly prejudiced, you may continue in that honest hatred?

Mr. Riddell: I say you are using apples and oranges. A black person is a black person because he had no other choice, right?

Mr. Arkin: Yes.

Mr. Riddell: I use the words "natural" and "unnatural," and of course you will shoot me down on that. You will say that homosexuals are natural. But I do not think you can make a comparison. I do not think you can honestly make that comparison between black people and sexual orientation.

Mr. Arkin: Why not? You are telling me that any argument you make is valid and natural, and any argument I make is invalid and unnatural.

Mr. Riddell: No, I am not. I am just saying that the separate school boards have a certain religious belief and they are prepared to put up an argument that heterosexuality is the normal, say, code of behaviour, the normal lifestyle, whereas homosexuality is not.

What you are asking me to do is to recognize the fact that homosexuality is a normal code of behaviour; you have to accept it, you have to hire a teacher. I am saying that to give homosexuals their rights is automatically taking the right away from the separate school board that they can no longer hire on the standard that they have been using for years and years.

Mr. Arkin: But you have already taken the rights away from separate school boards. You have told them that they can discriminate on the basis of sexual orientation.

The Pope has recently said that the place for women is basically in the home, and that it is best for women to be in the home. Now, if the separate school board decides to take a rigid interpretation of that and say it is their honestly felt belief that women should not be working, and they will not encourage



women by hiring them, would you allow that to be? We are talking about the validity of people who say, "I do not have to follow the Human Rights Code because I honestly believe in my prejudice."

Mr. Riddell: Well, whether you can call that a prejudice-- I will not carry on, Mr. Chairman.

Mr. Chairman: Any questions?

Ms. Copps: I would like to respond to that. That issue in and of itself is probably not relevant because the separate school, at present, can discriminate against prohibited areas of discrimination.

For example, you cannot be hired as a teacher in the separate school board if you are divorced. That is a ruling that has been upheld by the Supreme Court, et cetera, et cetera. So, whether you agree or not, there is court precedence for that kind of an exemption.

Mr. Riddell: Right. But it would not be if this was included in the bill.

Ms. Copps: No, no, it would be.

Mr. Riddell: No, because this takes primacy over anything else.

Mr. Chairman: Mr. Riddell, you two will have, I am sure, ample opportunity to debate this.

Mr. Arkin: I have just one more comment to Mr. Riddell. In Quebec, the charter of human rights and freedoms was amended in 1977, and the Catholic schools still function as they always have; there just has not been a problem. The Catholic schools did not say, "Our rights have been taken away." There has been no clamour, no ground swell of protest. It works.

Mr. Riddell: Has it changed their hiring practices, though?

Mr. Arkin: I do not know, but no one has complained about it. The Catholic schools have not complained about it.

Mr. Chairman: Ms. Copps, you had a question?

3:40 p.m.

Ms. Copps: I asked this question of someone else last week. It is in the number of openly homosexual people in Ontario. How many would you estimate are openly homosexual?

Mr. Arkin: In a sense it is the same as asking me how many people are openly partisan or openly political. I know people from all parties and some are more political than others. I really have no way of judging that. It depends on your definition of "openly homosexual."

Ms. Copps: I guess it is getting at Jack's point of who the Coalition for Gay Rights in Ontario represents and that kind of thing. The estimate was made last week that they represented somewhere in the neighbourhood of 10,000 active homosexuals in the province.

Mr. Arkin: I should think, frankly, that is an underestimation when you consider that when the baths were raided in February, there were 3,000 people at that protest march which was called on the spur of the moment and which took place in only one city.

Ms. Copps: The reason I asked the question is because in terms of actually having public examples of discrimination, which Jack was concerned with in terms of rationale for inclusion, it would seem quite difficult to establish numbers of precedents in view of the fact we have so many people who are not openly homosexual or who are hidden away and are afraid--as you say, a member of this committee or many members of the Legislature--who cannot openly express the fact that they are homosexual. Therefore it is hard for you to develop a body of evidence when you are dealing with, actually, a very small percentage of the community that actually exists.

Mr. Arkin: Mr. Riddell could well have asked me the question, how can Jews show that they are discriminated against? For unless someone is wearing a skull cap or perhaps comes in wearing a star of David pinned to his jacket, how will the employer know whether he is Jewish, Christian or Moslem or anything else?

The whole question of discrimination is very hard to prove. The human rights commission itself has had a lot of problems.

Ms. Copps: When did you become aware of your own sexual preference?

Mr. Arkin: It is a very interesting question because it really ties in with what I talked before, about the protection of gay students in the school. Ever since I can remember, since I was very young, I can remember having the sense, if you will, that something was not quite right. I did not feel that I belonged with the majority view, as perhaps Mr. Riddell would put it.

But even when I was in my first year of university, it was still something that I denied. It was not until my second year of university that I came out, that I acknowledged to myself that I was a homosexual. For me, that was a very liberating experience and it felt very good. For the first time ever in my life, I felt like a whole person instead of someone who was fragmented.

As far as I am concerned, the real sexual abuse of children is the sexual abuse of gay children in the schools who are taught that what they are and who they are is bad and is wrong, and they should not be that way.

To answer your question, there are two parts. I always knew that something was up, but it was not until I was an adult in

university that I understood what that was, that I understood I was a homosexual.

Ms. Copps: When you were an adolescent--

Mr. Van Horne: Mr. Chairman, could I interject? I do not like to interrupt my colleague, but we do have other witnesses. I wonder if there is anything more in so far as our consideration of matters relevant to this particular piece of legislation. I do not think that the points we are pursuing now are in fact relevant.

Ms. Copps: I just want to ask one more question. The reason I feel it is relevant because another question that has been raised has been whether or not an adolescent can be somehow seduced or attracted to homosexuality through a teacher or a peer.

When you were an adolescent, what kind of support systems did you have?

Mr. Arkin: When I was an adolescent, I was not a gay adolescent; I was a suppressed homosexual adolescent. I did not know about that. I was not in touch with who I really am.

But if members of this committee are concerned somehow about the corruption, the tainting of children by their contact with homosexuals, I would ask those members to look at the paradox that they pose. On the one hand we know there is great societal pressure against homosexuals, even though that is changing. You have had many church bodies come before you to speak in support of the amendment, but in the general case, there is a lot of pressure against homosexuality, there is a lot of pressure pushing people into the closet. It is portrayed in the media and often in the schools as something that is very bad.

So you have something that is very bad and people are always talking about it and yet you have the belief that if someone comes in contact with it they are going to find it is so fantastic and so wonderful that instantly they will be converted, and all this reasoning and all this teaching goes out the window. So you have to make up your minds that either it is something really bad or it is something that is really good and you are trying to keep the kids away from it. I do not think you can have both positions.

Mr. Renwick: Mr. Chairman, I do not want to have the committee tarry on the question because we have gone into many of the aspects of it, so I am going to frame my comment as a request to Mr. Arkin.

First of all, I appreciate the eloquence of your presentation to the committee on the question. I have two matters that I would appreciate if, at your leisure, you would consider and perhaps write to me. If suitable, then I could share it with my colleagues on the committee.

The first question which I understand is of real concern to my colleagues on the committee is that by including sexual orientation as a prohibited ground in the code the committee, and ultimately the Legislature, will be taken to have condoned the



lifestyle of homosexuality. I think it is fair to say, and it is not because the minister stated it, but the minister stated in answer to a specific question that the reason it is not included is that in the judgement of the cabinet it is the lifestyle which is not acceptable.

I am not speaking in rational terms, I am speaking of a very real concern of the inclusion in the code which, if it is included, will be a question of protecting every person in the province against discrimination for irrelevant reasons in accommodation, housing, and so on. So I would appreciate it if you would, at your leisure, address that specific question, because I think it is a very general concern.

The second one is, simply because in the course of discussion I was expressing my views on it, if you would read the Hansard of this committee on the morning of September 10, and I believe on the morning of September 15, I in my own way was trying to sort out a basic concern I have in relation to the school system or, as I expressed it then, trust relationships between adult and children or young people.

It was in the course of, first of all, the presentation of the Toronto Board of Education. Then it was in connection with the presentation of the Metropolitan Toronto Separate School Board. Then I followed along at the time when the Right to Privacy Committee appeared the same morning. I was not engaged in questioning the value judgements of the various organizations, I was trying in my own mind to develop my own thinking about the question.

At the culmination of it, from my point of view, I expressed the concern I have and the reservation I have about the cultural mores of the society with respect to that relationship in the educational system, or in the parole system, or in the children's aid society. I would appreciate it if you would take the time to read those particular exchanges in which I again emphasize I was not arguing with the people who were presenting their views, I was trying to clarify my own concern.

If you do have an opportunity to consider that and write to me, with your permission I would then share it with my colleagues because I think they are two very fundamental concerns to this committee that are going to have to be addressed if we are going to be able to have an intelligent discussion on a clause-by-clause basis when we come to that particular provision of the code.

I would appreciate it if you would do that.

Mr. Chairman: Thank you very much, Mr. Arkin, for appearing before us.

3:50 p.m.

Mr. Riddell: Mr. Chairman, I think I should maybe rise on a point of correction, or whatever you might want to call it. My colleague chose to use me as a personal example of one who could not teach in a Catholic school by reason of the fact of

marital status. I would just like to say that I could not teach in a Catholic school because I am not a Catholic, but when it comes to marital status I think we are in the same boat. The only difference is that in the Protestant faith a legal separation is known as a divorce. In the Catholic faith a legal separation is now known as an annulment. Other than that there is very little difference.

Mr. Renwick: I am glad you clarified that for us.

Mr. Brandt: I am getting enlightened all over the place.

Mr. Chairman: Cate Lazarov is next. While the brief is being circulated, I will have to leave at about 4:15. We are obviously not going to be adjourned at that time.

Next Tuesday we are having some difficulty with the scheduling. The clerk will have to notify all the members of the committee as to the schedule for Tuesday. If it is not possible for the Quebec human rights people to come in the morning then we may try to meet at 12:30 or one o'clock, or some such time, and have them both in the afternoon.

So I should say that there is a possibility that we may not be meeting at 10 o'clock in the morning. We are trying to arrange that, but those seem to be the two options for Tuesday. If we do not know at the conclusion of today's session, the clerk will notify everybody about next Tuesday.

Ms. Copps: Mr. Chairman, I would also like to put on the record I certainly did not mean to hurt my colleague in any way and I apologize publicly.

Mr. Chairman: I can see that he is hurt.

Ms. Copps: I am sorry.

Mr. Riddell: Apology is accepted.

Mr. Brandt: I will remember that when it is a member of the opposite party.

Ms. Lazarov: The first speaker, Mr. Palmer, had said something. He said the little guy has given up. That is not true because I am a little guy and I came here today because I believe that you will listen to me. That is why I came. I believe that you will put some value on what I have to say. I ask you to bear with me because I am absolutely terrified of being here.

Mr. Havrot: Just relax.

Ms. Lazarov: That is easy for you to say.

Mr. Havrot: We have not beaten anybody up yet.

Ms. Lazarov: I realize, Mr. Chairman, that you have been getting letters, cards and telegrams urging you to include sexual

orientation. I was given 26 more on my way here from North Bay. You will be happy to know that my brief is brief.

Mr. Riddell, before I begin I wanted to tell you that everything that the second speaker said was very definitely true about discrimination. I see the Toronto gay people, the homosexual people, as being very lucky because they can overlook so much because they have got so much. They have bars. They have meeting places. They have churches. They have places where they are welcome, but in small communities we have nothing at all.

In North Bay, just looking for a place to meet--every single church but one closed the door in our faces. Worst of all, we have the worst type of discrimination. I think we are, in fact, the only minority in the world that is discriminated against by our own families. Very often, if we are to tell our families that we are homosexuals, they refuse to speak to us. Or worse, if we are very young they put us in psychiatric hospitals or just abandon us.

Mr. Riddell: But legislation will not change that.

Ms. Lazarov: Yes, it will. Because if you take the first step, if you change the laws and give us some kind of protection, then you will see a lot of different people doing a lot more in educating the general public. My family is part of the general public and they will listen.

If people like you who are so well known and so respected take the time to say publicly that we are okay, that we deserve protection from discrimination, my family will listen, where they might not listen to my friends and myself. But they will definitely listen to people like you. Anyway I won't say anything more, I will begin with my--

Mr. Riddell: I choose to call that education rather than legislation.

Ms. Lazarov: I think we need legislation; we need protection and we need it spelled out very clearly.

I have brought with me two examples of discrimination that I have personally met with. Believe me, these are only two of many I personally have been involved with.

I am not sure I mentioned it or not; my name is Cate Lazarov and I am from North Bay. I come here for three reasons. First and most importantly, to urge you to include sexual orientation in the Human Rights Code. Secondly, I want to inform you that discrimination against homosexuals is not restricted to large cities such as Toronto. It is a common occurrence in places like North Bay and its surrounding small towns.

For example, on August 8, 1981, eight homosexuals--myself included--were barred from the North Bay Ramada Inn for the crime of dancing together. We received a response to our written letter of complaint from the manager of the hotel. It does not make sense. He said we were not barred because we were homosexuals, but because our dancing together was likely to cause a disturbance.



Why should homosexuals dancing together cause a disturbance? If homosexuals were to be disturbed by heterosexuals dancing together, would the heterosexuals be barred? I think we all know the answer to that one.

A second example of small-town prejudice occurred earlier this year. I was a staff member of Telecare, which is an international voluntary Christian agency, the purpose of which, as was told to me in my Telecare training, is to provide a listening, caring ear to those who need to talk and also to act as a referral agency to other agencies in town. One of the agencies on the Telecare referral list is the Caring Homosexual Association of North Bay.

The trouble began on March 13, 1981, when a male homosexual called and was put off by one of my fellow workers. In my opinion, he was treated in a less than caring way. In her report, the worker wrote that the subject of homosexuality was "not her bag." On the report, our director wrote, "Glad you were here to receive this call."

While I was disturbed by the way this man was treated and the way in which this treatment was supported by our director, I ignored it, with the exception of writing my own comment on the report, "I wonder if the caller was glad you were here to receive this call."

On April 23, 1981, this same worker received a call from a homosexual male from Ottawa, who was in town because his mother had had a stroke. Afraid that his mother would die and wanting to be free to say anything and not have to guard his words, he felt the need to talk to other homosexual persons. He asked the Telecare worker if Telecare had a gay worker. He also asked her to refer him to a gay organization if any existed in North Bay. The worker told him it was none of his business whether Telecare had a gay worker or not and refused to refer him to the gay group that was on her referral list.

I tried two courses of friendly action before submitting a letter of complaint to the Telecare board of directors. Both attempts were ignored. At no time was my complaint ever dealt with.

While I knew the Telecare board of directors would not like my complaint, I was not prepared for their reaction. I was abruptly dismissed from my services to Telecare. While they said they had no complaint with my work, I was fired because I was "personally and emotionally immature." To top off this outrage, I was threatened with legal action should I pursue my complaint.

If the Telecare board of directors supported this worker's personal prejudice towards homosexuals, why not someone else's prejudice towards blacks, alcoholics, single mothers or anyone else who would call?

4 p.m.

With my brief I am including a copy of the exchange of communications between Telecare and myself, Telecare and Ramada

Inn. These two examples clearly indicate the feeling of society towards homosexuals. I firmly believe that this attitude would change if you took the first step and included homosexuals in the Human Rights Code.

Finally, I'm at my third reason for being here today. I would like you to explain something to me. I live in a community where homosexuals are very definitely visible. We are barred from the Ramada Inn for dancing together; we are beaten up on dark streets; we are called "faggots" and "dikes" by people in cars passing by; we are fired for being gay; people who think they can see us do crude imitations of us, like the weak wrist; we are denied housing for being gay, et cetera, et cetera. It goes on.

In short, when it comes to being discriminated against I am clearly a very visible target. Yet when I ask for protection against discrimination I am called an invisible minority and denied protection.

I beg you to tell me: At what point do I become invisible? What happens between the street where I live and the room where laws are made? I don't understand.

I also would answer any questions that any of you would have.

Mr. Chairman: Thank you very much. Are there any questions anyone has? If not, thank you very much.

Ms. Copps: I have just one. How long did you work for Telecare?

Ms. Lazarov: About six months.

Ms. Copps: Were you there as a volunteer or as a paid employee?

Ms. Lazarov: I was there as a volunteer, and if they had known I was a homosexual they would, of course, (inaudible) hired me.

Ms. Copps: How did they threaten you with legal action?

Ms. Lazarov: In writing. It's in the very last page of (inaudible).

Ms. Copps: Okay. I see it there.

Ms. Lazarov: At no point did they ever talk to me. This is a Christian, loving, caring organization which told us in our training to leave our personal prejudices behind. Here was the board of directors made up of priests, ministers, very well-respected people, supporting the actions of a very discriminating person.

There are several on their board who are like that. This man--I have met with him since, and he was just horrified at the way he was treated.

Ms. Copps: Thank you.

Mr. Sheppard: I think you made a comment or two there when you first started to speak in regard to your parents. Do your parents know you are a homosexual now?

Ms. Lazarov: My own parents? Yes.

Mr. Sheppard: You said that if this law were passed they would accept you. Is this what you--

Ms. Lazarov: My own parents and family accept me now. They are not comfortable with it; they are ashamed of it. They will not tell their neighbours or any relatives, because it is not socially acceptable.

If I were given some kind of protection in writing and the educating began--it would all happen, and I know that very clearly--they would very definitely feel better about it. I am also the founder of the Caring Homosexual Association (inaudible) in North Bay. The reason I got involved was that I got tired of seeing young kids 14 and up turning to drugs, turning to alcohol, turning to suicide because those were the only choices they had just to be able to exist.

Mr. Sheppard: Could I ask you one more question? A while ago you said there were eight. What about the other seven people? How do their parents receive them? Much the same?

Ms. Lazarov: There are only three of the eight whose families even know that they are homosexuals--to their knowledge.

Mr. Sheppard: To their knowledge. The other five parents--

Ms. Lazarov: The other five are very--the word the gay people have is "discreet," which means very afraid, very much afraid. But when they saw that things were getting ugly, that it looked as if we were going to be barred, they got up and danced also just to show support: "I am one of you." To me that was a very large step. They were very afraid and they did it.

Mr. Sheppard: In your brief you said that if you had any literature or mail it should be sent to the Ramada Inn. Do you send it there?

Ms. Lazarov: I have a copy with my brief of a letter that I did send them. I told them I was going to be speaking here today and that I would very definitely mention their name and their treatment of us.

I really wish you would take the time to read the reply, because it's out-and-out silly. You couldn't possibly read it and think it made sense. We were very definitely discriminated against because we were homosexuals. You know, and we all know here, that if I were to go to them and say, "I am very upset as a homosexual person that all these heterosexuals are dancing," those heterosexuals would not be asked to leave. We were.



I might also point out that four out of the eight were not drinking at all. The other four had only had one or two, because we had just gotten there. So we weren't--

Mr. Sheppard: They were not on drugs or anything?

Ms. Lazarov: No, I don't take drugs, I don't drink, I don't smoke. I'm as old-fashioned and square as you are ever going to find, and my (inaudible) is the same and several of the others are, too. That's obviously the choice of people we have as friends.

Mr. Sheppard: Okay. Thanks, Mr. Chairman.

Ms. Fournier: I wonder if I could ask the clerk what we should do with these things that we have gotten signed? We have some cards. We have sent some already to Mr. Harris's office.

They say: "I believe that lesbians and gay men ought to have the same protection against discrimination as is provided to their fellow citizens and to members of other minority groups. I support the specific inclusion of sexual orientation in the Ontario Human Rights Code as a ground on which discrimination is prohibited by the code." We also have letters that say a similar thing. These all come from Mr. Harris's constituency because that's where we live.

I would just like to point out to Mr. Harris that we didn't seek these out, even though they are all form letters and this and that. These are all people who said, "What can I do (inaudible): sign a letter or what?" I think if we actually had an active drive for people who would support us we would have quite a few, and not just homosexual people but many heterosexual people who simply believe in human rights in the (inaudible). So what do we do with these?

Mr. Chairman: If you wish to direct them to the committee you can leave them here. If any are addressed to me personally as Mike Harris, MPP, then I accept them personally. If they are addressed to me as chairman of the resources development committee I turn them over to the clerk and they are entered on the record as having been received.

Now, I don't--

Ms. Fournier: I see. Well, we have already given you some personal ones as our MPP, and we have some 26 here.

Mr. Chairman: Leave them here with the clerk and they will be put on the record as having been received. Thank you very much.

Archibald Jamieson.

The Acting Chairman (Mr. Lane): Good afternoon, sir. I think everyone has a copy of your brief now. Would you like to proceed?

Mr. Jamieson: My name is Archie Jamieson, and I would

like to tell you one or two little things about my background, because they are relevant to the points I would like to raise this afternoon.

I came to Canada in 1952 and have been a resident of Ontario since that time. I came from Scotland, as you can probably tell from my accent. I was a metallurgist in industry and later a manager in the foundry industry, an industry employing about 100 people. In 1968 I gave up on industry and became a teacher at Niagara College of Applied Arts and Technology, and I have been teaching since then.

Because of my background in management and industry I teach in the division of applied management. It's because of this that I have this interest in the changes that are taking place in the legislation.

4:10 p.m.

Unlike the first speaker I accept the fact of life that legislation is going to continue to change and probably enlarge all the time. We see a stiffening up of the safety legislation with the Occupational Health and Safety Act, and we see the likelihood that the Ontario Human Rights Code will be beefed up as well.

I would like to read to you from my brief, which is not terribly lengthy, and to make some comments as well. I think that after you write a thing like this down you realize that there are some things you have missed out.

The Ontario Human Rights Code has offered assurances against discrimination on the basis of certain specified attributes in the areas of employment and access to accommodation or public places. Bill 7 is now about to expand on these rights, and before it is finalized I would like you to consider the addition of a restriction to conduct that so far has been condoned and on which the legislation has been silent. I refer to public ridicule for commercial purposes.

Any person who puts himself in the public eye leaves himself open to being caricatured in the press or on the stage and screen. This is as it should be in a country that boasts of freedom of speech. We must always guard against those people who are our leaders or potential leaders taking themselves too seriously, and it's important that we draw attention to the silly statements they make from time to time and bring them down to size. I think this is what we do.

However, it's a totally different matter with regard to groups of people. Public ridicule, if it persists, perpetuates stereotyping of groups and reinforces prejudice, and the individual members of the group cannot fight back. If I am ridiculed to my face for my Scottish accent or imagined characteristics I can respond in kind. But if I am ridiculed or caricatured in a newspaper advertisement there is nothing I can do about it. In recent years there has been an increase in this type of advertising, both in television and in newspapers.

I have attached on the back page of this brief a copy of an advertisement that appeared in the St. Catharines Standard on January 30, 1981. Incidentally, I come from St. Catharines. This ad appeared not only in the St. Catharines Standard but in the Globe and Mail and other places as well.

I regret that I only have one example to show you, but there have been many others, and I should have cut them out and kept them. However, there are two other examples that I would like to mention to you verbally. The Kellogg cereal company have a commercial on television which caricatures the Scots in a little boat, and the Thrifty company ran commercials on television caricaturing the Scots. When I drive through Hamilton and see the Thrifty store there is a caricature on the outside of two supposedly Scottish faces wearing their highland bonnets. I suggest to you, ladies and gentlemen, that had these faces with the headgear been, for example, a Sikh wearing a turban or a Jewish gentleman with a skullcap it would have been only a matter of days before there would have been at outcry about it.

I respectfully suggest that such ridicule for commercial purposes be prohibited before the situation becomes any worse. It seems to me that it is only a matter of time before it will occur to some advertiser that if he can hold the Scots up to ridicule with impunity then why not some other group?

What would happen, for example, if East or West Indians were made fools of in commercial advertising? How long would it take for pressure to change the law? I suggest to you no disrespect of any of these groups I have mentioned. I think that they would probably be right. Can we expect that all groups will have the same forbearance the Scots have had in the past?

It seems to me that your committee should be giving serious consideration to questions such as these. Given the immunity that advertisers seem to have at the present time it would be extremely naive to imagine that the ridiculing of racial or ethnic groups will not expand or that some advertiser will not step just far enough over the line to cause a backlash even among the long-suffering Scots.

The existing Human Rights Code has a section at the very beginning which says, in essence, that no person shall publish or display any sign or symbol indicating discrimination for any purpose. At the back of this, it is not picture, that is a symbol of the disrespect that some businessman has for the self-respect of the Scottish people. Obviously this first section has been inadequate to deal with this kind of situation.

I fully endorse the idea of free enterprise and the making of a profit, but I do not think that it should be made at the expense of someone else's self-respect. I would like to ask you, how does a new immigrant from Scotland explain to his little children that it is all right for other racial groups to make a fool of them, but they must not do it to anyone else? That is my first point, ladies and gentlemen.

My second one is, again, in a somewhat personal vein. I was



disappointed to note that although the definition of age had been expanded in the new bill, in other words to get rid of the discrimination at the low end of the age scale, it still included the right to discriminate against someone over 65, which is what the inclusion of 65 allows this.

I am sure you have been told many times how we arrived at 65, but I am going to repeat it anyway. This age was arrived at by the German chancellor, Otto von Bismarck, in 1884--at a time, incidentally, when the life expectancy at birth was 37 years. So, this was not very much of a gift that was given. Everyone seems to have latched on to this idea that somehow or other, 65 is a magic age, after which people deteriorate.

Ladies and gentlemen, I would like to tell you about myself. I am a very active person. I am 58 right now. Last year and the year before, I ran over 1,000 miles in each of those years, as part of my personal fitness campaign. I have written this brief. I have written a textbook, recently, which is going to be published at the end of this year. So, physically and mentally, I am fit. Am I to think that in two years' time, some serious decay is going to take place, and that in another five years' time I will be fit for nothing but being kicked out on to the scrap heap?

I think if I am willing and able to work productively for society, I should be free to do so. Putting a restriction of 65, allowing it to stay in the Human Rights Code, means that an employer may say to me when I reach 65, "Sorry, Archie, but you are too old"; and there would be nothing that I could do about it, whether I was still perfectly fit and capable or not.

If they wanted to hire somebody at the low end of the salary scale to teach instead of me, being at the top, they would be perfectly free to do so; and as long as less than 65 years remains in the definition of age, competent people will be forced out of their occupations for purely arbitrary reasons, and many will then cease to contribute to society and the economy, and will instead become a drain on society.

I suggest that we try to be leaders in this regard and eliminate the discrimination at the top end of the definition of age. I suggest that we should allow people to contribute for as long as they are mentally and physically able.

Incidentally, it is interesting that in today's Globe and Mail there is an article about a United Kingdom doctor who has done some research into ageing and into faculties such as memory. He finds that the continuing of activities which keep the cardiovascular system fit also help a person to retain mental faculties.

I am doing all these things, and there are many many others like me. What is going to happen to us? Is this going to be for nothing? Are we just going to be kicked out on to the scrap heap when it comes to that magic age of 75? I ask you to consider taking that top age out of the definition.

Mr. J. A. Taylor: Sorry, you said "75." The reason I am

correcting you is that some people have suggested that it be raised to 70. Professor Triantis--

4:20 p.m.

Mr. Jamieson: Frankly if you raise it to 70, all you are doing is taking another arbitrary decision. I do not think you can arrive at an age.

We have two kinds of ageing. We have chronological age, which is the number of years we have been alive; we have biological ageing, which is the state of our physical body. The two do not necessarily go together. We have premature ageing in young people, and we have longevity. Many of our best politicians have lived for a long time.

Mr. J. A. Taylor: I will just let the latter remark go.

Mr. Jamieson: I mean it respectfully. People like Diefenbaker were productive people for a very long time beyond 65.

Mr. J. A. Taylor: I appreciate what you are saying. I was going to say that I suggested to Professor Triantis that what he was doing was substituting discrimination at 70 for discrimination at 65.

Mr. Jamieson: Yes, that is what it is.

Mr. J. A. Taylor: His response was a step at a time, in effect; that you have to be practical. What you have already said is you are not suggesting any age limit.

Mr. Jamieson: I do not think there should be any age limit. There is a question of ability. That is the word I would like to emphasize. If a person is still able and is willing to continue, why deprive him of the opportunity to be a gainfully employed member of society?

Mr. J. A. Taylor: That would be something between the employee and the employer.

Mr. Jamieson: Yes, I would say so. To put in this age of 65 years is just giving someone an excuse for poor management and getting rid of someone where they have not really quite evaluated this person in a proper manner.

By the way, I mentioned an article in Time magazine. Around 1977 I was doing some research into the literature on this. This is the article from Time. Obviously it is rather lengthy and that is why I did not include it in my brief. There are quite a number of pages. There are quite a number of very pertinent points in there.

Shall I continue with my last point?

The Acting Chairman: Sure, please do.

Mr. Jamieson: Maybe I am rushing a little. When I said

"75," I may have slipped there because I was looking at the clock; I was listening to the comment about stopping at 4:15. I really appreciate the opportunity to continue today because it is a little bit of a drive from St. Catharines.

My last point has to do with nondiscrimination against handicapped people. I agree with the general principle that it would be desirable to have handicapped people employed in as gainful a way as possible, whichever way we define this word "handicapped." However, an incident occurred at a place where I worked a number of years ago, which I have never forgotten and which has always been in the back of my mind whenever this subject comes up.

I was a metallurgist in a foundry where we had a labourer who was an epileptic. He did work as everyone else did. Among the jobs he had to do was to climb a vertical ladder to a sand hopper and take a bar and poke the sand down. Foundry sand is not like sand on the beach. It is moist and there is clay in it. It hangs up sometimes and bridges over, so someone has to free it and let it fall down.

While he was up on the top of that bin one day, he had a seizure and fell. Fortunately he did not fall backwards. If he had, he would almost certainly have been killed. He fell into the bin. Fortunately again, there was enough sand to cushion his fall. Fortunately again, there was not so much sand as to suffocate him. And fortunately again, someone saw it happen, so he was able to be rescued and brought back down.

We have to be careful when we are trying to be kind that we do not finish up being cruel. The first speaker said something about the road to hell being paved with good intentions. This bill gives a blanket prohibition, without any exemptions, against discrimination on the basis of a handicap in the area of employment, providing--here is what the bill says--"the person can perform the essential duties."

This does not appear to me to be satisfactory. I have extensive experience in heavy industry. It is not so much the essential duties that are important as the ability to react in the event of an emergency.

When we drive our cars, some people have accidents and we have statistics about them. What we do not have statistics about are the near accidents that were prevented because of the fast reaction on the part of the driver. Just being able to turn the key, turn the wheel, put your foot on the accelerator and the brake are not sufficient.

In heavy industry things can go wrong, and prompt action, a shouted command, a run to get out of the road of something, happens quite often. Cables can break, ladles carrying metals can leak and spill on the floor, many things can happen, and because they do not result in personal injury, the occupational health and safety inspectors never hear about them. But they do happen.

I am concerned about the ability of a disabled person with



the kind of disability that might prevent fast reaction, such as someone totally deaf or someone who has difficulty walking, being able to move fast enough. They may be able to perform all the essential duties of the job but not be able to respond in the event of an emergency. Reaction time is an important thing when it comes to the avoidance of a personal injury.

Another aspect of this is that there is a possibility we might be getting into conflict with another piece of legislation. The Occupational Health and Safety Act says that the employer shall take every precaution reasonable in the circumstances for the protection of all employees. Someone being injured as the result of a handicapped person not being able to respond I think might, in some future time, charge that the employer by hiring someone who could not respond in an emergency had not taken every precaution reasonable in the circumstances.

I think we are putting the industrial manager in a position of being damned if he does and damned if he does not. If he does not hire a handicapped person he is in trouble, and if he does and it results in an accident he is going to be in trouble too. I do not think that is a situation we should put people in.

I suggest that either the phrase "performing the essential duties attending the exercise of the right" be qualified, or that provision be made for the exemption of certain industries. I am particularly thinking of heavy industry where emergencies are quite dramatic and the action time has to be extremely fast.

Physically fit people are injured and killed in industry today. This is the reason we have the Occupational Health and Safety Act. It is a necessity, and it has been beefed up over the old Industrial Safety Act because society does not accept any longer the amount of pain and suffering that has gone on in the past.

I pose the question to you, ladies and gentlemen, are we going to wait until we kill someone before we realize that this new legislation is not being kind to them at all?

I want to thank you very much for the opportunity of presenting my brief and for your patience.

The Acting Chairman: Thank you, sir. If the chair may be allowed to comment, I would like to point out that I did reach that magic age of 65 this summer and I do not feel any different than I did 15 years ago, but I do not advise that you rush toward that particular magic figure. Take your time. Are there any questions?

Mr. Brandt: Mr. Chairman, I wonder if I could, by way of clarification, just comment that section 21(6)(a) specifically points out that where there is a bona fide qualification because of the nature of employment the employer can be excluded from the provisions of the bill. It is really an extension to the essential duties part of the bill that you were reading earlier.

I think our interpretation of that would cover in a somewhat

complete way the kind of concerns that you have indicated.

It is difficult from the drafting standpoint, members of the committee would agree, that when you attempt to define essential duties for every kind of job that may exist in society in Ontario it would be virtually impossible. But it was the intent of the draftsman of the bill to cover in that particular section of the bill the very concerns that you outlined in your last point.

That is my interpretation, unless another committee member feels differently about it and wants to bring it to my attention. We felt that we had adequately covered your point.

Mr. Jamieson: You feel that point allows a particular industry to be excluded for specific reasons of hazards?

Mr. Brandt: Yes, where there are bona fide reasons. In fact, a specific industry could make application to a commission for clarification on that point.

You are bringing up the situation where a potential emergency may arise, where perhaps a quick reaction would be necessary, where a handicapped person would not be able to respond as quickly, because of the nature of the handicap, as someone who was not handicapped. I am suggesting to you that "essential duties" is also covered under that subsection, which I think very clearly states that where there is a bona fide reason then that handicap would render the person outside of the confines of this bill.

4:30 p.m.

Mr. Jamieson: Have you provided in the regulations for a means for applying for that exemption? Have you stated it in here somewhere?

Mr. Brandt: We could perhaps clarify that even more directly.

Mr. Jamieson: That went past me, perhaps because I did not find any regulation describing how to go about applying for that exemption.

Mr. Brandt: There are a number of groups that have appeared before us. Perhaps this is not a relevant example of the same sort of thing, but the police chiefs association, as an example, indicated that they only wanted to hire people from the age of 21 and up who also were Canadian citizens. It would have to be determined by the commission, I would suppose, that that is a bona fide requirement because of the nature of the work of a police officer. That has not been determined yet and is still an open question. But that is one example where an exemption could perhaps be given if it was deemed to be appropriate.

Mr. Jamieson: I see.

Ms. Copps: I happen to agree with you on your position regarding 65, 70, 75, any age limit, but I guess it is sort of

like going into the water; we may be able to convince some people to get their feet wet and get in half way. That is the point I think the professor was trying to make yesterday, that he would like to see it lifted totally but he felt that, logically and legislatively, we may be able to convince the Legislature to go along with 70 as opposed to--

Mr. Jamieson: It would certainly be a step in the right direction.

Ms. Copps: I am interested in what you say about the experience that you have had as a Scottish person, because often you will see on television car ads about so and so being cheap and that kind of thing. Do you ever write to them or attempt to use moral suasion?

Mr. Jamieson: No. I saw the ad about this change in the Human Rights Code and I thought this was a far better forum.

Ms. Copps: It is funny that in some cases, advertising that was socially acceptable let us say 20 or 30 years ago is totally unacceptable now and, yet others, for example, Scottish or that commercial that was on for a while with the Chinese and the (inaudible) somehow were allowed to be gotten away with.

Mr. Jamieson: I would like to comment on your comment about 30-odd years ago; 30-odd years ago we did not get this. It is only in recent times--

Ms. Copps: I was thinking more along the lines of maybe 20 or 30 years ago you would see a lot more of what we would call Uncle Tom advertising with respect to the blacks. That is no longer acceptable or accepted, and yet you can see it institutionalized in the Scottish or other groups.

I just wondered if you ever considered going into it, because in the present code theoretically one should not discriminate against people on the basis of origin presently.

Mr. Jamieson: Yes, but apparently it is ineffective because they are doing it, so apparently the present code is not being administered correctly if that was the intention of that, but it does not seem to me to be inclusive enough to stop this practice.

Ms. Copps: But you have never laid a complaint or anything like that?

Mr. Jamieson: I think it is pretty futile for one individual to write to a big corporation like Kellogg or Thrifty's--what was the other one I mentioned? Oh yes, the Ponderosa. I do not think that would have much effect. I would have to try and get a bunch of signatures before it was likely to have any effect, whereas I can speak to this group here and, hopefully, it might have some effect.

Mr. Brandt: Yes, I have been enlightened by that matter in the field of advertising. I personally do not happen to be of Scottish origin but I always looked upon that as being somewhat of



a compliment towards the Scottish people. I am not in your shoes, and that is part of what this bill is all about, but the thrifty Scotsman who knows the value of what a product is worth and that sort of thing, I always look at that as being complimentary.

Mr. Jamieson: I do not think that is complimentary.

Mr. Brandt: But you have enlightened me. I am agreeing with you. I am saying you opened my eyes towards the situation from a different perspective and I appreciate your comments in that regard. I had never taken it the same way as you did, because I am not walking in your shoes quite obviously and I do not have your brogue, so we come from different directions. But I appreciated your comments and I just wanted to say that.

Ms. Copps: I have one other question also. Do the engineers--because we have had a number of engineers suprisingly who have come and spoken. I think there have been two other engineers and it seems like you have been coming before the committee more than--

Mr. Jamieson: I have not had discussions with anyone else.

Ms. Copps: So they haven't had any lobbying within the engineering field?

Mr. Jamieson: No, this is strictly a personal matter. I have not had discussions with anyone else. Perhaps we are just active people.

The Acting Chairman: Mr. Renwick.

Mr. Renwick: Mr. Jamieson, just on the first point, the question of what I call group slander or group libel, whether it is to hold people up to hatred or contempt or ridicule is a matter that I have worried about for a long time. I just don't think this is the appropriate route to follow through here. I think it would be extremely ill advised to have a commission in some kind of a role that appeared to even be verging on something called censorship or making judgements with respect to that.

The route I have been thinking about, not in relation to the particular example you raised, but in relation to distributions that have occurred in my riding, holding various ethnic groups up to hatred, contempt and ridicule--sometimes hate literature, sometimes just straight stereotyping and so on--I have discussed with a couple of libel and slander lawyers in trying to figure out whether there is not some way of putting in the Libel and Slander Act something which I conveniently call group slander or group libel, so if no person is named, it is just the group which is slandered.

If I am a member of that group, I could come forward in a court on an action for libel or slander and simply say that I was a member of that group. If it was a slander of a black group and I was black, then I could say I was slandered and therefore I have access to the courts under the Libel and Slander Act.

I do not pretend to have thought it out very clearly, but I certainly believe it is a route that should be explored, in my judgement, as a better way within our jurisprudence or method of dealing with these questions of dealing with that type of question. So if you feel you are held up to hatred, contempt or ridicule you would have access to the accepted restriction on freedom of speech, which is that you cannot slander or libel a person. I thought you just might be interested in a comment on it.

Mr. Jamieson: I am not a lawyer, so I make no pretences. I read the law because I am involved in teaching to students what I call the rules of the game they have to be involved in when they go out into industry. It would seem to me, though, that most of this legislation is about discrimination for these various things listed and that is why I thought the Human Rights Code might be the place to put it. But could not comment on it from a legal point of view.

Mr. Renwick: I just wanted you to know what my thinking is on it. This is the first time that particular question has been raised with us and I am most interested in your comment on it.

Mr. Jamieson: I quite believe in it.

The Acting Chairman: Any further questions?

Thank you very much, sir, for coming down from St. Catharines to be with us and make your point of view known, which you have done very well.

Mr. Jamieson: Thank you very much for the opportunity.

The Acting Chairman: Is Mr. James Puddy here? It seems he is not here, and Mr. Mawani already indicated he could not be here because of family reasons, so that will be all for this afternoon. Ladies and gentlemen, we will adjourn until Tuesday at the call of the clerk.

The committee adjourned at 4:40 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
THE HUMAN RIGHTS CODE  
TUESDAY, OCTOBER 6, 1981





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour:

Elgie, Hon. R. G., Minister  
Armstrong, T. E., Deputy Minister

Witnesses:

Roy, L., Quebec Human Rights Commission

From the Ontario Human Rights Commission:

Brown, G., Executive Director  
Laskin, J.  
Stratton, J., Director of Compliance and Administration

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, October 6, 1981

The committee met at 1:14 p.m. in room No. 151.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: We are very pleased that Mr. Roy was able to get here today. I know some of the members--I have heard from a couple already--are having difficulty flying in today. They have all indicated they are coming if they can fly in, but we must start.

We have two witnesses before us who are appearing today at our request as opposed to their request, so we may ask them questions. Mr. Laskin cannot be here until 3:30, so I would propose that, if we have time between Mr. Roy being here and 3:30, we would recess until 3:30.

Mr. Bertrand Roy is the director of investigations and legal representative for the Québec Human Rights Commission. We are very pleased that you came today, sir. Basically, we would like to ask you questions and hope you can give us some of your insight into your experience with the Québec human rights code. I think that is the gist of it. Mr. Lane has his hand up but Ms Copps, I think, did take the initiative in having Mr. Roy come here. I suggest maybe she ought to lead off.

Ms. Copps: Mr. Roy, are there any remarks you wanted to make in opening or would you rather be subject to questions?

Mr. Roy: I would like to say that I brought with me some copies of the Charter of Human Rights and Freedoms, which is the anti-discrimination piece of legislation on rights in Québec. It is in English. If you wish to have a copy of it, it is right here.

I may also tell you that the anti-discrimination provisions of our act come under section 10 and the subsequent sections 11 to 20. Our legislation is somewhat different from that existing in Ontario, in the sense that it covers a great many fundamental freedoms and rights. It is not just an anti-discrimination piece of legislation but, on the other hand, the anti-discrimination aspects of our act do have a lot of similarity to the one that has been adopted for, I believe, 20 years in Ontario. Ours has been in force for six years so you have a lot more experience. We have had a limited amount of experience with respect to the implementation of anti-discrimination provisions.

To come back to our legislation as it is, and its differences from the ways that it operates in Ontario, the grounds

for discrimination are perhaps more involved in Québec than they are in the Ontario legislation. When you look at section 10, you will be able to see the extent of these grounds. I think there are 13 grounds. I stopped counting at one point. One of them is a rather general ground referring to social conditions.

Another difference from the Ontario legislation is that we in Québec address ourselves to the ordinary courts when we want to have redress for a complainant. In Ontario, as you know, the recourse is to a board of inquiry, which is certainly an adequate recourse. As a matter of fact, our own commission is pressuring the government to look at all questions of foreign recourses. This is being reviewed in Québec and perhaps we will end up with a situation similar to the one in Ontario.

1:20 p.m.

So these are two great differences, but the similarities are quite evident also, if you look through the act. Our act gives a lot of importance to conciliation and mediation between parties in dispute with respect to discrimination. Our commission also gives a lot of importance to investigation. Investigations can be made; there is nothing in the act that prevents them from being made along the model followed in Ontario, although we do it a little bit differently.

Generally speaking, the investigative enactments are basically the same. Therefore, we are very close cousins and I am very happy to be here to answer questions. I would like to say also one thing, that as a citizen of Québec it is always a pleasure to come to Ontario. In my own particular case, I would like you to know I lived in Ontario for many years. As a matter of fact, I married a lady from Ottawa, and my daughter was born in Ontario. So I feel towards Ontario as a very close parent feels.

Ms. Copps: Unfortunately, we haven't had a chance to read some of the material that is being put before us at present, but I guess there are a couple of reasons why I specially wanted you to come. One is because of your experience with the inclusion of sexual orientation as a prohibited ground of discrimination. That happens to be one of the more controversial areas of our discussion. It is not a proposal in the proposed code. There will be some limits. I wonder if you could tell us a little bit about the political experience with respect to the introduction of prohibited grounds of discrimination and also the subsequent effect it has had on the Québec Human Rights Commission.

Mr. Roy: I am not sure I understood the first part of your question, the implications--

Ms. Copps: One of the problems we as legislators have been facing is that some people fear there may be a terrific groundswell of public opinion against inclusion. I want to find out what kind of background you had that led to the inclusion politically and then the subsequent experience of the commission with the inclusion.



Mr. Roy: It is difficult for a public servant like me to talk about political implications, but I can say though that the act was amended at Christmas time in 1976, or just about Christmas time, at the time when perhaps not too many media people were on the lookout for changes such as these. As a matter of fact, our commission had been pushing for such changes. We had also been pushing for an accompanying change to deal with age discrimination.

I believe our commission strategy was to make it more palatable to introduce two changes: one, absolutely acceptable to everyone, was regarding age, and the other, which may be more controversial, was regarding sexual orientation. It turned out that the government found our proposal for the inclusion of set age grounds in the act was radically controversial from the economic point of view and they wanted to study the whole thing further, so they didn't go ahead with it. All they went ahead with was the sexual orientation, and it passed without any problem at all. I don't think anybody complained that I know of.

There was little effect that was noticeable by anybody, I'm really convinced. That was perhaps a question of circumstances, but also I believe the whole idea was finally for the government to take a position whereby it would say everyone has to be treated in the same way in this land of opportunity--equal opportunity has to be given to everyone. Sexual orientation should not come into question when it comes to exercising this equal opportunity right we all have. The issue was not a very strong one basically and, therefore, did not attract too much attention. If it had attracted attention, I'm sure the debate would have been rather short because, as I just said, it's a question of fundamental right and freedom. This is a question of justice, not a question of morals. It is not a question of anything else.

Ms. Copps: Since it was introduced at Christmas 1976, presumably since that time you have had investigations and complaints. What would you say is the level of complaint or the percentage of complaints the human rights commission feels on the issue of sexual orientation?

Mr. Roy: The level of--

Ms. Copps: The percentage of complaints that your commission feels--what level would be based on sexual orientation?

Mr. Roy: We have received very few complaints based on sexual orientation. They account for about two per cent of the complaints we have received, which is very few. Two years ago, we had included in our act the handicapped grounds, that is, the prohibition to discriminate on the basis of a handicap, and that brought us a tremendous workload. But in the case of sexual orientation, there was a small trickle of complaints that came to us--as I said, two per cent; something like 29 or 30 a year out of a much larger group, of course. So it is very negligible. But, on the other hand, some of them were interesting cases that sometimes made an impact on the public scene.

Ms. Copps: What would the response of the commission be

to criticism that when homosexuals, for example, are dealing in the teaching field, or in other fields where they could have contact with children, there are questions? Have you had complaints in that sector and how have you dealt with them?

Mr. Roy: We haven't had a complaint that our commission has had to resolve specifically in the field of education or teaching, like professors. We have never had a complaint where we have actually had to make a real decision. We had complaints that were settled during the course of an investigation, because the authorities got round to a settlement. But our commission never had to take a real position on it.

I understand from talks that our commission has had, there would be little likelihood that our commission would consider that a homosexual--either male or female--would be in an inappropriate or wrong place if they were to teach children of either sex. I don't think our commission would take a position where they would exclude homosexuals from teaching. I can say our commission would not go along that way unless, of course, there was a presence of sickness--and that applies to anybody or any kind of sickness.

In other words, if a person has a difficulty with his or her sex life and is very sick and may present an actual danger for children, that person should be taken away from children, of course. But our commission's position is that you must not say that homosexuals, as a rule or generally speaking, will be sick persons. They are not any more or any less mentally sick than other people. That is a result of a lot of research our commission has done. We would be happy to give you a copy of the research we have made on that, if you want.

Ms. Copps: So, from my understanding, you have had no complaints that have been pursued by school boards, school administrations or administrator associations on the issue of homosexuals teaching in schools?

Mr. Roy: No, we have never had that issue clearly put before us, as I have said. I can give you an example of two cases where we had two complainants. They were ladies who were perceived by the nuns who were administering the school where they were teaching as being too outgoing in their sexual lives--that is, they projected the idea of being very sexually active. The nuns didn't like it and they fired the two ladies. But it was not a question of homosexuality or anything like that, it was just a question of sexual orientation--that is, an orientation that was unacceptable to the nuns. That was settled out of court.

Ms. Copps: Were they heterosexual?

Mr. Roy: They said they were heterosexual. We don't have any tests to find out.

1:30 p.m.

Ms. Copps: There are some other areas that I'm interested in asking about, but maybe you would rather resolve that one issue of sexual orientation. But if you've got questions--

Mr. Eaton: If I could just follow up on that: Did they get to keep their jobs?

Mr. Roy: No. They settled out of court. They got their 10,000 as a settlement, which was very generous.

Mr. Eaton: They lost their jobs.

Mr. Roy: Yes. Just for them to go away. Actually, the nuns thought they should not have looked as promiscuous as they looked and set a bad example or whatever. It was very debatable, and we weren't able to conclude anything. But these people, should they really have been aggrieved, had recourse where they wouldn't have had any if there had not been this particular piece of legislation.

Mr. Sheppard: Did those nuns find another teaching job later on, or do you know?

Mr. Roy: Did those nuns what?

Ms. Copps: They weren't nuns.

Mr. Sheppard: I thought you said--

Mr. Roy: There were two nuns who were doctors and who were administering the school. The two teachers were lay teachers.

Mr. Sheppard: Did they find teaching positions or jobs in other places, or do you know?

Mr. Roy: I don't know. I don't know what happened to them after that. They might have ended up in another type of school where their lifestyle mattered less than at that particular school. Even then it was not proved that their lifestyle mattered so much; I mean, it was not proved that they had done anything wrong. There was a lot of hearsay, and, as happens in a lot of cases, parents reported things that they had heard other people say. You know, hearsay can kill people.

Mr. Sheppard: Was this in a city or in a town or a small community?

Mr. Roy: It was in a very large suburb of Montréal, and it was a very large group. I think these people were really victims. From what we've had in our investigation we felt there was a good chance that they were actual victims, and it was, I think, appropriate that they should be reimbursed. But we were not able to conclude our investigation, so it remains that we are not totally sure.

As I said, it's important that these people have recourse somewhere, and they had before us.

Mr. Havrot: With regard to the bill becoming law in December 1976, as you mentioned: Was there a great mounting by the homosexual community to have sexual orientation included in the act?



Mr. Roy: There was a rather substantial campaign, yes. They were active and they succeeded within two years, from 1976 to 1977. As a matter of fact, I will give you an example of the work that the gay community does. We have here a copy of a brief that is being presented this week to our own parliamentary committee in Québec city, and it deals with further changes they would like to have implemented in our charter.

Mr. Havrot: To your recollection, was there a lot of discrimination against the homosexual community before the implementation of the act? And is there still discrimination, to your knowledge, since the bill has become law?

Mr. Roy: We have made a difference. I'm sure the fact that there is recourse for people makes a difference; it is at least preventive in its effect. But I believe that there remains a lot of discrimination. I'm sure a lot of people do not accept homosexuals, and they will get rid of them for all kinds of reasons. Most of them are not good; usually they are based on scientific knowledge that dates back to the last century.

I would say that the impact of our charter is difficult to determine. I would like to hope that we have done something, that we have made a difference and that these people feel more at ease and better at home. But in their brief, which I just mentioned to you a minute earlier, they do say that not too many people complained to our commission. They referred to the fact that there are only very few complaints. Last year there were 26. They say that it must be because of a lack of information and fear on the part of those who can or should complain. That's very likely, and that's the case for most people who are victims of discrimination here.

Mr. Havrot: Were there, to your recollection, any situations that involved the police in Québec, for example, like the Toronto raid in February of this year? Were there any such situations in Québec relating to the police zeroing in on the homosexual community to harass them, as they claim?

Mr. Roy: We've had just one ongoing incident for a while. It was in a park in Montréal, a special park, La Fontaine Park. It's a large park right in the centre of town. The police maintained that male prostitution was going on in that park, and they frequently raided that park and arrested anybody who was there. We received a variety of complaints from innocent people--or those who claimed to be innocent--who were harassed by police. But that was the only thing we had. It was nothing compared to what you lived through in Ontario.

Mr. Havrot: As a result of these park incidents did the homosexual community actually raise a protest against the police actions?

Mr. Roy: Yes. They complained to us and they raised a protest. We talked to the police, and as far as we are concerned this has apparently stopped now. That is, the police are not arresting people as they used to. The problem was that the policemen would too readily accost anybody. It could very well

have been myself walking down the street, and if I happened to be close to that park I would be pulled in for questioning very easily. Dressed as I am and as heterosexual as I may be I could very well be brought into the police station. As a matter of fact, we received some complaints that led us to talk to the police. And, as I said, it just about closed the matter at that time.

Mr. Havrot: What is the attitude of the church in Québec in relation to this?

Mr. Roy: It's quite open-minded. I'm talking about the official church. There are all kinds of people in the churches. Some people are more fundamentalist than others. But I'm talking about the official church, which says that it has something against homosexuality but nothing against homosexuals. The church does not like homosexuality. The Pope has said it recently. I believe you were talking about the Catholic church when you were talking about Québec.

Mr. Havrot: Right.

Mr. Roy: The Pope said last year or two years ago that homosexuality is not the way to go, but the church does say that it does not cast out sinners. You see? In other words, should the homosexuals be sinners or whatever they should still be accepted in the church. My commission feels that if the church can accept sinners an employer should also, shouldn't he? Somebody who rents apartments, perhaps, should also accept such a sinner.

Mr. Eaton: Is there a difference between apartment renting and someone renting, say, a room in a private house?

Mr. Roy: There's no problem there.

Mr. Eaton: You're allowed to make that judgement yourself?

Mr. Roy: Oh, I'm sorry. I didn't get your question right, then. What is your question?

Mr. Eaton: In our proposals if you're renting an apartment building, for instance, in large buildings you can't discriminate in any way; but if I'm renting a room out in my house and I am going to share a bedroom, a bathroom or a kitchen then I can in fact discriminate--

Mr. Roy: Right.

Mr. Eaton: --because of marital status and that kind of thing.

Mr. Roy: We have the same provision in our territory. Oh yes, of course. If you rent just one or two rooms you are allowed to choose the person you are going to live with, of course. That seems reasonable to anybody. I think so. It's up to you--

Mr. Eaton: I agree with you.

Mr. J. A. Taylor: You do not distinguish in your code whether you are renting one room or 10 rooms, do you?

Mr. Roy: We do in section--I forget which section. If you hand me the act, section 14 says that sections 12 and 13 do not apply--that is, the prohibition to discriminate on the basis of lodging. I have the French text; I'm trying to translate. Do you have an English text? Could you read section 13 for us?

1:40 p.m.

Ms. Copps: "The prohibitions contemplated in sections 12 and 13 do not apply to the person who leases a room situated in a dwelling if the lessor or his family resides in such a dwelling, leases only one room and does not advertise the room for lease by a notice or by any other public means of solicitation."

Mr. J. A. Taylor: So there are three things there: He has to reside there himself, it can only be one room and he does not advertise.

Mr. Roy: So it's a circumscribed type of situation.

Mr. J. A. Taylor: The definition of discrimination in your code is narrower than ours. Are you familiar with our draft code?

Mr. Roy: Yes, somewhat. Not as much as I would like to be.

Mr. J. A. Taylor: Could you compare the grounds of discrimination in Bill 7 with your code in terms of the extension of that definition? I don't see it applying to such things as record of offences, for example. And then there's the question of economic discrimination if a person is receiving public assistance in regard to housing. And then there's family status in ours as well, which I don't think is in yours. Could you give us sort of a comparison of the breadth of discrimination--

Mr. Roy: You say that under your proposed amendment you are going to cover the question of criminal records--is that what you said?

Mr. J. A. Taylor: Yes. Well, it's provincial offences, and it deals only with federal offences if there is a pardon, as I understand it, because we only have jurisdiction in connection with provincial offences.

Mr. Roy: Okay. Under the Québec act there is a ground that's called social condition. That's the last or the second-to-last ground enumerated under section 10. Social condition has been interpreted by our commission to cover criminal records of all kinds, including federal or provincial offences.

Now, the courts have not agreed with us. We have had a series of judgements recently, although we're going to appeal these judgements. But recently the courts--the superior court, the provincial courts in Québec--have said that social condition does



not cover a person who has a criminal record. So therefore it's quite likely, if these judgements were to be upheld on appeal, that we do not have any provisions with respect to criminal records as you intend to have.

Mr. J. A. Taylor: I have picked up your code, your charter of human rights and freedoms, while I have been sitting here and I have been perusing it, so I haven't had an opportunity to study it. But it strikes me that it is broad in scope, and there seems to be a great deal of potential for flexibility of interpretation. Is my perception correct?

Mr. Roy: You're quite right. Very much so.

Mr. J. A. Taylor: What you have indicated to me so far is that you have interpreted this to include discrimination on offences, whether they're criminal, federal or provincial offences, and that now is being questioned by your own courts as to whether you can go that far.

Mr. Roy: Right.

Mr. J. A. Taylor: Has any other dispute in regard to your interpretation gone to the courts? I'm interested in the role of the judiciary in reining in your interpretation of your code.

Mr. Roy: Well, we have had a series of judgements on the question of social condition, which I started to mention a minute ago. I said criminal offences are ruled out right now; maybe on appeal it will be changed. But also we thought that social condition should include the fact that one is on welfare. Many people are refused apartments because they are on welfare. Although they could afford to pay rent they are just refused because the owner says, "You're on welfare." Now, we thought that was covered by our act, but the courts have said that it is not covered. We do not know what's covered now if that is not covered, but the courts have said no.

On the question of sex, we thought that sex covered the fact that a pregnant woman was covered. A pregnant woman that is discriminated against because she is pregnant is not covered according to our courts at the present time; she is not covered under sex. She would be covered, perhaps, under a proposed amendment that we are asking the government to push through but the courts have cut down on that.

The courts have cut down, also, on the handicapped, the physically and mentally disabled. They went so far as to consider that some one who is extremely or moderately obese would be covered by physical disability, but the court said no, that is not the case. That is a rather technical type of interpretation and it refers to another piece of legislation, but it remains that the courts have been extremely conservative when it came time to give an interpretation to various nebulous grounds that have been included in section 10. Maybe it would be better for you to go the route of more explicit type of enactments as opposed to our general ones.

Mr. J. A. Taylor: You mentioned that sexual orientation, while being included in your charter, is at present the subject matter of submissions from the gay community for further change in the legislation. Could you indicate what prompted that, or is it, again, as a result of a narrower interpretation than you might have suspected your section should be given?

Mr. Roy: The gay community got a real good scare at one point. They came to our commission to complain that they had been refused by the Montreal Catholic School Commission--remember in Québec the school boards are confessional, that is, Protestant or Catholic--the Catholic school commission refused to rent a hall in a school for a convention of homosexuals.

They came to our commission and they said they had been discriminated against because of their sexual orientation and our commission looked at the matter. The commissioners who were on our commission at that time felt that the Catholic school commission, because of section 20 of our act, could validly refuse, because it was Catholic, the rental of a hall to persons or a group that was not behaving itself, or belonged to a group that was against the Catholic religion--the whole thing that we talked about earlier, that the Catholic religion forbids homosexuality; therefore the Catholic school commission has the right not to rent to somebody who actually promotes the idea of homosexuality.

Our commission agreed with that, but complainants have the right under our legislation to go directly to the courts if they have come to our commission and have had no success. They went to the court and the Superior Court decided in their favour. It became more liberal than our commission had been.

However, the gay community got scared that there would be widespread use of section 20, which is a commonsense type of thing (inaudible) professional qualification is covered, for instance, by section 20. The gay community was afraid that our commission would apply that section 20 too liberally and therefore defeat the purpose of the act even though the courts had vindicated the gay community by giving them a favourable judgement.

1:50 p.m.

So the gay community is out on the warpath, so to speak, to get section 20 out of the act, and have no provisions which would permit discrimination at all, because section 20 says in certain cases you can discriminate. For instance, if you are a political party, you might want to hire as your organizer a member of your party. That would be perfectly legitimate. It would not be discrimination on the basis of political convictions. Things like that are permitted under section 20. The gay community would now like section 20 to be abolished, and I must say not only the gay community, but other groups too. I don't happen to agree with that. I think section 20 has its place. It is a commonsense type of section in an act like ours.

Mr. J. A. Taylor: That is a fairly broad request, though, because it would then eliminate, as I understand section 20, any exemptions in terms of discrimination.

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Mr. Roy: It would, and I think it is obvious that it will not be acceptable to government; but you never know.

Ms. Copps: The way I read it, the exemption would only apply if the organization were serving exclusively their clientele.

Mr. Roy: That's right.

Ms. Copps: In the case of the school commission, did they rent this facility out to other groups?

Mr. Roy: That is not where the--

Ms. Copps: Therefore they disentitled themselves from section 20.

Mr. Roy: They actually went into an abortion group. They actually went into extreme left-wing groups until ultimately only homosexuals are against religion. They made a choice that was not acceptable.

Mr. J. A. Taylor: Because of the very generalized wording of many of these sections in your code, do you find there are complaints made that have to be addressed but aren't contravening the spirit and intention of the code, as you interpret it?

Mr. Roy: When you look at section 10 there is just about nothing that escapes except age discrimination, if you give a broad interpretation to all the grounds that are there. And that is what our commission did. We have given as broad an interpretation as possible to all of the grounds, including political conviction and whatever. Therefore, when we receive complaints we tend to take most of them because most of them are acceptable from a legal point of view, acceptable in the sense that we have chosen to open the doors as wide as we can.

Mr. J. A. Taylor: Have you indicated the volume of work that you do as a result of that? How many complaints would you handle a year in your commission?

Mr. Roy: Last year, we received about 1,300 totally new complaints that have to be added to the ones from the preceding year which were still outstanding. That is a quite significant number for a commission that has been in operation for four years and does not have regional offices like you have in Ontario. Therefore we have few complaints from outside Montreal and Québec City.

Mr. J. A. Taylor: How many complaints would have on the go at any one time?

Mr. Roy: At this particular time we are handling maybe 800 cases at one time.

Mr. J. A. Taylor: Do you provide for any financial assistance to persons based on means or other tests so that they can pursue their complaints?



Mr. Roy: We think our duty is to represent before the courts ourselves. That is what my office does, represent before the courts the complainants for whom we have found discrimination and for whom there has been no settlement.

Mr. J. A. Taylor: Do you fund, separately from the commission staff, outside legal help or other type of help?

Mr. Roy: Very occasionally; not very much. We have a sizeable research staff that does a lot of the work for us in terms of legal research.

Mr. J. A. Taylor: I was going to ask you the size of your staff and what your budget was.

Mr. Roy: We have 67 people on our staff out of which I may say less than 20 who are actually involved in investigation and legal representation. The rest are involved in education, information, co-operation--that is, liaison work with the communities--and research.

We have a staff of about 10 people, including support staff, who do research; quite a sizeable staff. They have a duty to examine all legislation in Québec, all previous legislation, to determine whether that legislation is discriminatory or not. That is a lot of work. They have to go back for many years in the statutes. And every time a piece of legislation comes before the National Assembly, our commission usually takes a look at it and says whether we feel it is discriminatory.

Mr. J. A. Taylor: Could you indicate what your budget is?

Mr. Roy: The budget would be maybe \$2 million, but that is not a very reasonable figure to give you because I don't know what the rent is. It is paid directly by Public Works. If here in Ontario you were to try to find yourselves in the same situation, you would have to consider the rent, I suppose. I don't know exactly what the rent would be. Therefore the budget, except for the rent, would be in excess of \$2 million. I am not sure what the latest figure was because it was brought down last week. I am not sure exactly what the number is but it is in excess of \$2 million, maybe \$2.2 million.

We have not had a single additional employee since 1976, and I don't know if we will ever have any more because of the economic problems everyone has, including government. There is a great effort at compressing government expenses in Québec, as I guess everywhere else.

Mr. J. A. Taylor: Could you indicate the typical time frame for processing a complaint?

Mr. Roy: Right now we have a very scandalous situation. One has to wait for one full year before an investigation of one's complaint is started; except in very urgent cases where we deal with sexual harassment or with other types of human problems. That is about 100 cases a year and those are the cases which we start

immediately. In the cases that are not urgent, there is a year's wait.

We are looking at the possibility of speeding up our work in various ways. We have changed our procedures considerably in the last six months and we are hoping to catch up. I don't know if we will ever be able to. I may tell you that in the United States they have the same problem. They have 100,000 cases backlogged in the States.

Mr. J. A. Taylor: How do you deal with frivolous complaints? Are you effective in eliminating those at an early stage?

Mr. Roy: That is very difficult. We have an intake procedure that does not look so much at the frivolity of complainants or complaints. It is only during the process of investigations that we find the frivolous nature of a complaint.

Mr. J. A. Taylor: Is there any remedy for a person who is accused of discrimination if the complaint is frivolous or vexatious?

Mr. Roy: If a complainant has made a frivolous complaint, he may have made other people suffer because we have made an investigation, or he may feel he suffers because he feels he is aggrieved; but there is no remedy there for anybody.

Ms. Copps: On that point, since the complainant has recourse to the courts in any case, would the alleged infringer also have recourse to the courts in terms of malicious prosecution?

Mr. Roy: I do not understand your question at all. Would you repeat it?

2 p.m.

Ms. Copps: In Ontario, unless a person goes to a board of inquiry, he cannot go to the courts. In Québec, you said that you have the right to take a complaint to the court regardless. I wonder if that right would also extend to the person against whom a complaint has been laid. If there were a frivolous complaint laid, would he be able to seek recourse in the courts like you could if there were malicious prosecution or that kind of thing?

Mr. Roy: I do not think so, unless we can establish that damage has been caused. It is a question of civil responsibility; I guess in Ontario you call it a tort. Is it a tort to do something like making a frivolous complaint?

The only recourse I could imagine would be for a respondent to apply to the courts for an order stopping any investigation made by us that is frivolous. That would be the only recourse. We have never had that, although a lot of people have said to us that complaints before us are too often frivolous. But there has never been any action taken against our commission.

Clerk of the Committee: Do you have any English copies of the act?

Mr. Roy: All I have are French copies. I did not have enough room to bring any English copies of the act, but I have some French copies; perhaps they could be useful.

Mr. Sheppard: Mr. Roy, we had a presentation here on Thursday that said approximately 10 per cent of the population of Ontario was homosexual. Do you have any idea what percentage of the population in the province of Québec is homosexual?

Mr. Roy: No, we do not have any studies on the percentage of homosexuals. I believe there were some scientific studies made. I don't recall. If I were to quote from those studies, I probably would be wrong. But do I not remember some place that at least 24 per cent or 25 per cent of the population is likely to be at least part homosexual?

Mr. J. A. Taylor: Half and half, eh?

Interjection.

Mr. J. A. Taylor: We had a lesson in demographics. It was also indicated that 10 per cent of the population was left-handed and 10 per cent had blue eyes; so we can store those--

Ms. Copps: I think that 10 per cent was not drawn from the population of Ontario; it was drawn from scientific research which shows that a conservative estimate of the population at large was 10 per cent. There is no study in Ontario to show that 10 per cent are left-handed either.

Mr. J. A. Taylor: I don't think it is an issue.

Mr. Sheppard: I don't think that was made clear.

Ms. Copps: I think that was the intent, though. Studies on people with blue eyes and people who are left-handed have not been restricted to the province of Ontario; they have just been done--

Mr. J. A. Taylor: I am sure. Mr. Roy, getting back from the left-handed remarks to your (inaudible), I understand that you have some economic sanctions provided in your legislation in regard to clauses and legal documentation that might be discriminatory in nature. Is that correct?

Mr. Roy: Right. Section 13 of the act says specifically--

Mr. J. A. Taylor: Could you indicate the range of complaints you have entertained arising out of that particular provision, first of all in government contracts and then in private contracts?

Mr. Roy: We have not done anything with respect to government contracts, but it is not unlikely that we would get some. Nobody thought of bringing any complaints to us, but we have



had collective agreements to a great extent; they are contracts. Section 13 applies very specifically to collective agreements. We have had a series of collective agreements that have discriminatory provisions with respect to sex and sometimes to political convictions.

I do not really mean not political convictions; that would be something else. When I talk about political convictions and convictions and problems of juridical acts, I am talking about trade union constitutions. Some trade unions would forbid from membership persons who belong to the Communist Party, for instance. That is against our legislation. Section 13 forbids anything like that.

We have had to intervene in the case of the Québec amateur hockey association--you have had a similar case in Ontario--where girls were not able to play hockey with boys. That was based on the fact that the rules of the Québec amateur hockey association forbid play by girls. We were able to get the courts to declare that any rules such as that, based on sex, were against our legislation.

Mr. J. A. Taylor: You do not feel the Montreal Canadiens are threatened in any way, do you?

Mr. Roy: I think the Montreal Canadiens are probably above the law in Québec.

Mr. J. A. Taylor: What about the private contractual arrangements? Have you had many complaints in regard to contract matters?

Mr. Roy: No, not that I can recall offhand. But it is quite likely, for instance, that one day we could get a contract whereby gifts are exchanged. If I give a gift to you--I do not know the English terminology enough or the legal layman's terminology, but if I make donations--do you say that in English?

Mr. J. A. Taylor: Yes.

Mr. Roy: Donations (inaudible) of the contract. If I give something to you so that you will not ever give it to a black person, for instance, that would be against our act. Or if I make a bequest to you and I say you should never marry a Jewish person, that would be against our act. That is quite appropriate, because instances such as that have been found, and it is disgraceful that they should be tolerated. It is a good idea that legislation forbids that specifically.

Unfortunately, the civil code was not able to protect people against that type of thing in the past. Our act was brought in to re-establish the new public order with respect to that.

Mr. Lane: A good number of the concerns I had have been answered, Mr. Roy. I would just like to comment on your first remarks, where you indicated that you lived in Ontario at one point in time. I assume you always welcome an opportunity to get back to Ontario.

Mr. Roy: I always like to come back, to Toronto particularly and Ottawa; they are certainly the two most beautiful cities you can find anywhere.

Mr. Lane: And you mentioned your daughter was born here.

Mr. Roy: She was born in Ottawa, yes. Whenever I applied for a birth certificate for her, I called upon the Ministry of--I forget the name, but the the ministry responsible for social registration or whatever.

Mr. Lane: When you get back home, I hope you will give her greetings and best wishes from the committee.

There are a couple of things that were not touched on but that I am interested in. I think you said that, when you were debating this code, you found difficulty with the age thing and you left it in abeyance; you did not deal with it.

Mr. Roy: Age discrimination is not covered by our act. Section 10 does not cover any discrimination based on age. We are asking for it, though.

Mr. Lane: Do you mention age anywhere in the act?

Mr. Roy: Yes, we do; but not for the purposes of discrimination. Under section 48, which is a very unique section, we have the right to investigate cases of exploitation based on the age of a person or on a physical or mental disability. That is, somebody can complain to us that, because of one's age or one's disability, one is being exploited.

For instance, a person going on in age--let us say, 75 or 80 years old--becomes less able to withstand pressure from family or whatever and sometimes will be forced to give things like money, perhaps just a pension cheque, in return for lodging and meals. We have had complaints from Social Affairs and social workers who have told us, "This lady is giving all her money to this other lady, but she is not getting anything in return." We handle those complaints too, but that is the only place we talk about age.

Mr. Lane: Do you think they are likely to talk about it in the near future?

Mr. Roy: We are asking the government to include age as a ground for discrimination.

Mr. Eaton: Right now you are saying I could refuse to hire you because I thought you were too old or too young?

Mr. Roy: Precisely.

Mr. Lane: That is one quite important matter that has been bothering me, because we have a number of people with different ideas about age; is it less than 18, more than 65, or whatever?

The other thing Mr. Taylor brought up, and I just wonder if

I could question you further about it. Have you had a chance to read Bill 7?

Mr. Roy: I went through it this morning very quickly.

Mr. Lane: These frivolous complaints bother me somewhat. From what you see of Bill 7, do you think we are inviting frivolous complaints in what we are suggesting?

Mr. Roy: It would be unjust to express myself very decisively on the question of frivolous complaints that might arise out of some of your legislation. I think there is a very serious effort made on the part of those who have drafted this piece of proposed legislation to be very specific and very extensive. I sometimes wish our own drafters had done the same thing.

Sometimes, of course, to be very specific will eliminate the possibility that one would like to see. For instance, in our act, instead of saying generally that social condition is a prohibited ground, if we had said specifically that criminal records and the (inaudible) a social welfare recipient are prohibited grounds, it might have been more useful than a very wide ground.

I would say that by being specific, as you are, you will probably accomplish specifically what you want. I don't think the specificity of the various proposed enactments will give rise to frivolous complaints. There also has to be a discretion on the commission to deal with these things.

Mr. Lane: One concern we have had expressed is the right to develop a short list in the case where I am advertising for an assistant in my store, or whatever, and I get 200 applications, and I just don't have time to interview 200 people. In your code could you prepare a short list without discriminating?

Mr. Roy: Your question is, if you get a situation where you have to make a decision that is really a random type of decision or not a very--

Mr. Lane: To bring it down from 200 to 10, say, before I start interviews.

Mr. Roy: We would request that you explain to us how you came to eliminate those 180 applicants. You must have some kind of criteria. If you tell me you went by alphabetical order, I am going to say, "Okay, fine."

Mr. Lane: As long as we have reasons?

Mr. Roy: That are not discriminatory, yes.

Mr. Lane: Otherwise, it could cause me to interview all of them?

Mr. Roy: Right.



Mr. Lane: Which would be a long process.

Mr. Roy: Nobody wants an employer to do that. Even the human rights commission at its worst would not expect an employer to go out and interview an undue number of people.

Mr. Lane: So there has to be some way to prepare a short list, so to speak.

Mr. Roy: Yes. But I think your act, our act, everybody's act in this field permits an employer to use his managerial rights to the utmost as long as he does not use them with an intent to discriminate or his practices do not produce a discriminatory effect.

Mr. Lane: Approximately what percentage of your complaints actually go to a board of inquiry? Can you tell me?

Mr. Roy: In our case they go before the ordinary courts. There is only about three per cent of our cases that actually go before the ordinary courts. All the rest are either out of our jurisdiction--they are not so much frivolous; we haven't found that many frivolous--or perhaps have been settled. So we have only about three to four per cent that go to court.

Mr. Lane: I just have one more question, Mr. Chairman. Does the human rights commission tell the minister that he shall order a board of inquiry or ask them to do it? How is that decided upon as to whether it can be ordered or not?

Mr. Roy: No. When we finish our investigation our commission issues a recommendation to the parties. The recommendation is for the parties to do something specific, like let's say, reinstate someone and pay damages. When that is not accepted by the respondent the recourse for the commission is to go before the ordinary courts and the commission therefore takes one of its lawyers and assigns him to prepare the case for the provincial or superior court. They then seek an injunction or whatever.

Mr. Lane: You really do not deal with the minister at all regarding the involvement.

Mr. Roy: No, the minister is never involved and there is never a board of inquiry.

Mr. Lane: Okay. Thank you very much, Mr. Chairman.

Mr. Sheppard: Mr. Roy, have you had all your sittings in Québec City? I see on page 65, "The commission may hold its sittings anywhere in Québec." Have you always had them in Québec up to now?

Mr. Roy: No, actually that refers to where the commission will be situated physically, its main offices. Its main offices are in Montreal, as a matter of fact. We sit mostly in Montreal. The commission, nine times out of 10 will be in Montreal. It will seldom be outside. Once of twice a year it will

go to Québec City where a meeting will be held but we never go outside.

Mr. Snppard: So actually you meet in Montreal and in Québec City the odd time?

Mr. Roy: Just the very odd time, yes.

Mr. Havrot: Mr. Roy, would you have a breakdown of the 1,300 complaints, for example, as to the type of complaint that you have had over the last year so as to give us some idea as to whether the complaints were relating to discrimination?

Mr. Roy: The greatest bulk of our complaints is in respect to complaints with regard to employment. We have very few with respect to education, or access to public places.

Mr. Havrot: What about racial discrimination?

Mr. Roy: I am trying to put my hand on that. In respect to racial discrimination, only 11 per cent of our complaints deal with that.

Mr. Havrot: In other words it is about 100.

Mr. Roy: Yes, maybe a little bit more than that. Sex comes on top of the list. There are three times as much as anything else. Sexual orientation, as I said, is supersensitive. Physical handicap now is getting to be of greater proportion. It was at 10 per cent but it is climbing all the time. We even have some on the basis of religion, but it is about one per cent.

Mr. Eaton: Would the sexual ones be because they failed to hire somebody, either male or female?

Mr. Roy: Sex, yes. That would be a question of--

Mr. Eaton: Mainly hiring?

Mr. Roy: Yes. Or seniority lists in collective agreements that are discriminatory; seniority lists for men and seniority lists for women, wages for women and wages for men.

There is a joke in Montreal about the fact that we now have a lady president of our commission. Some people have said it is fine, the government will save money and will only have to pay half of the wages of a male.

Ms. Copps: Is your section 19 an attempt to establish equal pay for work of equal value?

Mr. Roy: Section 19 deals with equal pay for equal value. It is very unique.

Mr. Eaton: Equal pay for equal work, or work of equal value?

Mr. Roy: Work of equal value.

2:20 p.m.

Mr. Eaton: How do you judge that?

Mr. Roy: It is not so difficult. We have not had a great deal of complaints, for one thing. We have not been swamped by complaints, although everybody thought we would be. It has not made such a great impact from the point of view of complaints.

Mr. Eaton: How do you decide whether a janitor's job is of equal value to a manager's job?

Mr. Roy: There are ways to measure these things. We have developed job evaluation systems that can help in measuring these things. It is quite surprising what you can do. We have had cases in the North Shore of Québec where we compared a wood measurer with an IBM operator. I must tell you, it is actually the company that did it.

The company set up a job evaluation system that covered everybody, but then they said the women would get 15 per cent less than the men just because they were women. But they were able to compare. They had a job evaluation system that did the job except that they did not apply it as it should have been applied. When we came there, we said, "Listen, what you have to do is raise the wages 15 per cent." It can be done. It looks strange to a lot of people that you would compare a wood measurer with an IBM operator, but the company did it long before we got there.

Mr. Eaton: But you said they did it and then took any women's jobs and classified them 15 per cent lower.

Mr. Roy: They gave wages to the women, in the jobs that they held, that were 15 per cent lower than men's.

Mr. Eaton: What happened if you had two wood measurers, one a man and one a woman? They surely didn't say the woman got 15 per cent less?

Mr. Roy: You will find that in most of these cases there are no women working in that type of job. There are job ghettos and these job ghettos operate very effectively. It is just recently that women have spread out into the nontraditional jobs. You will almost always find that you have wage discrimination that goes along with discrimination based on equal access to jobs. But these things are changing.

Mr. Eaton: Do you have any discrimination because of language?

Mr. Roy: We do. One per cent of our cases last year.

Mr. Eaton: What kind of discrimination does that cover?

Mr. Roy: If I don't hire someone because he speaks only English or some other language. If somebody presents himself and



he speaks only English, but I need someone who speaks English and French and if it is true that I really need that, of course that is not grounds for discrimination then. But if I just choose my employees according to their linguistic background or the fact that they speak Spanish on top of the other language, the French or the English they already have, that is (inaudible). As I have said, we have had about 26 cases, about one per cent.

Ms. Copps: I have just a couple of questions. One relates to the issue of the handicapped. That has only been in effect since 1979, but you do not define handicap, you leave it very general.

Mr. Roy: Right.

Ms. Copps: One of the concerns that the disabled community in Ontario has, as it is listed in your amendment, they are granted full and equal rights and liberties, et cetera. They have some concern that the wording of equal rights without any qualifiers or any guarantee of access to either physical or job description, that it would tie their hands in applying the law. I wonder what your experience has been in this general area?

Mr. Roy: The government decided to amend section 10 to cover disabled persons. At the same time, it enacted legislation that obligated owners of buildings to provide access, such as building ramps and things like that, over a period of time. It also obligated employers to set up employment programs whereby the disabled would eventually be hired. That other legislation, which we do not see here, provided for a lot of things that would not have been possible otherwise.

There is also the possibility for an employer to obtain government subsidies to make certain changes to accommodate the physical disability of a person. That is the result of another piece of legislation. They also set up at the same time an organization called the Commission for the Disabled Person in Québec. That deals specifically with the problems of the disabled, except for discrimination which we deal with.

Ms. Copps: The budget for that particular commission, would that be reflected in--

Mr. Roy: Not at all.

Ms. Copps: It seems to me, with the number of staff you talked about and the extent of your work, that a \$2 million budget seems quite low for so many people.

Mr. Roy: Yes, as I said, rent is not covered by that. Possibly telephone bills and electricity bills would not be covered. But I did not prepare myself to talk to you about the budget. I have no figures at this point.

Ms. Copps: Have you had cases of disabled persons going into the courts and not being protected under this amendment?

Mr. Roy: As I said a little earlier, we attempted to

nave the courts rule on our definition of what is a handicapped person. That is, we brought in a case of a (inaudible) person. That was judged to be unacceptable. Also, we brought the case of a policeman who had suffered an ankle fracture when he was younger. When he applied to become a policeman, they said, "Your fracture on your ankle will make you more susceptible to eventual disability in 10, 20 or 30 years and, therefore, because our sickness benefit plans are too generous, we do not want to take you on because eventually we will have to pay you too much money."

We went to court and said: "Listen, this man is not disabled. We agree with everybody he is not disabled today, but he is being told that in 20 years he will be disabled. Because of that he is refused a job today. We are not even sure of the probability. It is only a question of an extreme eventuality." The courts did not agree with us on that, but it is on appeal also. We are counting a great deal on the Court of Appeal, as you can see.

Ms. Copps: You mentioned that you are suggesting amendments to the government to tighten up certain areas of interpretation. Do you have those amendments in proposed legislative form?

Mr. Roy: We do not have specific sections as such. We drew back from putting the words into the Legislature's mouth.

Ms. Copps: Regarding language, to what section does that apply?

Mr. Roy: Section 10. One of the prohibited grounds is language.

Mr. Eaton: Under that language section, you cannot discriminate in employment because of language. How does that relate to Bill 101 where they will not let a storekeeper put up a bilingual sign in the province? You haven't tested that in the courts yet?

Mr. Roy: That's a very good question. Your question is extremely interesting because another specific thing about our legislation is that it has some constitutional flavour in the sense that section 52 says that any act that is enacted by the Legislature after the enactment of this charter, if that act is discriminatory in one of its provisions, the provision is invalid. That means it is a bar on discriminatory provisions by the Legislature. Bill 101 was passed after this piece of legislation. This was passed by the Liberal government and, of course, that was before the present government.

We had a complaint not too long ago, about a year ago, because one person of Chinese origin said, "I am refused the right to choose my own schools or the language of instruction for my children. That is discriminatory, because if I were from England or the United States, I would have the freedom of choice, because under Bill 101 you have the right to choose whether you want to send your children to English or French school, if yourself you went to an English school when you were young. That is one of the provisions." That Chinese couple was born in China. "We did not go

o English schools, there were no English schools in China and therefore we are treated in effect in a discriminatory manner." They also said, "Not only are we being discriminated against but it is on the basis of an act which goes against this charter of human rights and freedom."

The commission looked at the whole thing and said that the complaint could not be accepted. It was not discriminatory to provide for the language of instruction through Bill 101, that the way it was proposed and the way it was written out in the act it was perfectly acceptable. That took about a year and a half of study by our commission. If I were that couple I would go to court.

Ms. Copps: On the issue of political rights, one of the suggested areas of inclusion has been political affiliation in our code. I note that in your code you include two rights: one is the right of a person to petition the assembly and the second is the right to be a candidate or to vote. If I am to understand it correctly, if you are a provincial civil servant then you can run for office in Québec with no impediments.

Mr. Roy: No, there is legislation that prohibits you from running if--I'm sorry, I don't really know what the provisions are; I don't really know. The problem was never brought to my attention very specifically. But there have been elections and referendums and it has not caused any problem, because there are ways of doing it that are provided for by legislation or in some other way, but I had better not answer that because I am going on grounds that I don't know of.

Ms. Copps: One of the suggestions made to us was that we include it as a grounds of nondiscrimination in employment. It was brought to our attention that in Nova Scotia there was a case where, in a government changeover, people who were involved in all levels of government, including nonplanning stages, were arbitrarily fired without recourse. But in Québec you don't have any protection in employment either; it is specifically the right to petition and the right to vote and to hold office. Anyway, that issue has not been addressed in your code then?

Mr. Roy: I am not sure I understand your question. If you are asking me if we can protect someone who has had political activities at one point or other and is being punished for it--

Ms. Copps: It is only in discrimination in employment. In government, for example, it is very often--

Mr. Roy: But if you work for the government, that is an employment. If you lose your job because you are a Liberal and it is now a Parti Québécois government, you are protected. As a matter of fact we are in court today on a case against the government whereby a Liberal gamekeeper--as a matter of fact it was a couple; a lady and her husband--were dismissed or not hired as seasonal workers when the Parti Québécois came into power. We tried to settle that. We were not able to and we are now in court. We are going to be heard one day.



Ms. Copps: So the couple is taking the government to court?

Mr. Roy: No, we are.

Ms. Copps: You are taking the government to court.

Mr. Roy: We are taking the government to court.

Ms. Copps: Is the protection per se supposed to be growing from sections 21 and 22 because I don't read it in that particular section and I just wonder where it draws from?

Mr. Roy: Section 10 says you have the right to exercise your fundamental freedoms and rights equally and your fundamental rights and freedoms are covered by this charter. Any right that is covered here, and even some that are not here, may be exercised by you on an equal basis with anybody else without regard to the grounds given in section 10. That means the right to political convictions and whatever.

Ms. Copps: The reason that question arises is--you must have other conditions, qualifiers or regulations that we do not see here.

Mr. Roy: No, there are no regulations under our act.

Ms. Copps: You mentioned that provincial government employees would not necessarily have the right to run for office, and yet by this section they do.

Mr. Roy: It's possible for the Public Service Act, for instance, to have provided for the right to run under certain circumstances or never to run under any circumstances. I really can't recall exactly what the provisions are, but it's quite possible that another piece of legislation provides for the matter, which it does as a matter of fact.

Ms. Copps: The question is raised that if we were to include political affiliation as a prohibited ground for discrimination, then there may be some cutoff point where in a change of government you would have senior policy people subject to dismissal.

Mr. Roy: Deputy ministers in our case would be replaced. As a matter of fact we were fully operational in 1976 when the government changed and the wholesale change of deputy ministers occurred. There were no complaints. I don't think we would have entertained any complaints because, as you say, it might be a bona fide occupational qualification, if I am going to use American terminology.

Ms. Copps: Then you would just cover it under the bonne foi--

Mr. Roy: We would use section 20 as a bona fide occupational qualification. In other words--

Mr. J. A. Taylor: Or an occupational hazard.

Ms. Copps: So your interpretation of the *bonne foi* is *bona fide*.

Mr. Roy: Yes.

Mr. J. A. Taylor: Are you suggesting that the intent and spirit of your legislated Charter of Human Rights and Freedoms would eliminate political patronage in terms of hiring practices and contracts?

Mr. Roy: It would certainly. As I said earlier, our commission is in court against the government in the case of an alleged bias, a alleged discriminatory patronage system in the gamekeeping department of Québec. We claim that it goes against our legislation and I think we have a good case in law. Maybe on the facts it will be a different matter. I think anybody working for the government who is bypassed because of a problem of political affiliation is protected, except perhaps the very special senior civil servants who have a very close tie with their ministers and the legislation.

With respect to granting of contracts, if a contractor comes to us and says, "I have not had the opportunity to receive a contract because I am labelled a Liberal and I am starving. I used to be able to get contracts in the past." If he alleges that and if we can determine that there is proof behind that, he has a good case.

2:40 p.m.

Mr. J. A. Taylor: How much clout do you have--by "clout" I mean authority--in terms of pursuing or investigating that type of complaint? Are all the documents open to you within government? Can you question everyone involved in regard to that and then make your determination based on the facts you seek out?

Mr. Roy: Yes, we have the opportunity of looking at all matters. As a matter of fact, right now we are involved very directly in a case that involves the Minister of Justice of Québec--not himself; I am talking about the Department of Justice. I have investigated a case that apparently caused some injustice to some Indians. Eventually there was even a coroner's inquest and the coroner's inquest was alleged to have been biased and all that. The investigation by the provincial police was alleged to have been biased by a complainant.

We have investigated and have asked the Attorney General, who represents us before the Legislature when it comes time to debate our budget or whatever, to send us documents. At first he balked. He said, "No, we don't have the right. There is no jurisdiction," this and that. He handled himself like a good lawyer. But we stuck to our guns and still expect to receive the documents we have asked for. Although he has said they are privileged information, we have said there is nothing privileged under this act.

Mr. J. A. Taylor: In that case, do you merely request the information or do you have the authority to attend before those persons and to personally seek out and obtain the information?

Mr. Roy: We have the authority to send subpoenas, which we send frequently. We send subpoenas to all witnesses and, should they not respond, under the act that covers commissions of inquiry like the McDonald commission--commissions like that have special powers; we have the same powers--if somebody refuses to obey an order of subpoena, we have the right to charge them with outrage au tribunal, contempt of court, which means \$50,000 or six months in jail. We have never done that, of course; we don't think we will ever do that, but it is a possibility--a theoretical possibility, but a possibility.

Our other powers are the powers to interrogate someone, to ask questions and obtain information under oath, and also to make reports to the Attorney General on infractions--that is statutory infractions committed under the act. If someone has committed perjury in testimony before us, we make a report to the Attorney General and he can deal with it, or if someone has done something else that is derogatory to the act, he will be denounced by us to the Attorney General and he will take legal action. He will go before the courts on the basis of a statutory criminal type of offence.

Mr. J. A. Taylor: You mentioned earlier this afternoon that representations had been made to your commission, and I presume to government, to change the act to clarify the discrimination provisions applying to homosexuals. Are there any other items for clarification currently being dealt with by your commission or by government in regard to your legislation?

Mr. Roy: Our commission has prepared a brief. Would you like to read it this afternoon?

Mr. J. A. Taylor: I would like to but I am afraid I won't be able to.

Mr. Roy: I don't think you will either because this is it. This is the brief that we submitted to the government with respect to changes that we would like to see in our act.

Mr. J. A. Taylor: It weighs several pounds and is several inches thick.

Mr. Roy: I can leave you a copy. But the things we want to add as grounds of discrimination are age, nationality, which is not covered, or the fact that a lady is pregnant. We want the words "disabled person" very clearly defined because they are not now. We have had problems with the courts. We also want discriminatory questions that are formulated in job applications to be forbidden.

We have also asked for clarification with respect to sexual harassment. Sexual harassment is a real problem, and it is not being addressed by our legislation in a very direct sense. It is



addressed in an indirect way. That is, section 10 refers to sex as prohibited ground, and we have extended that to cover the problem of sexual harassment. That is our position, but I am not quite sure about the courts.

Mr. Eaton: How do you interpret harassment?

Mr. Roy: We have a very wide definition, but it goes all the way to the possibility of words being exchanged that are not necessarily extremely offensive but tend to be disrespectful in a sexual sense or, sometimes, gestures that may not be acceptable in a civilized society. We go all that way, but we also cover very much of the mild sexual harassment, which is physical contact or proposals of a very specific nature and eventual retaliation.

Mr. Eaton: If you ask a fellow employee to lunch more than once, are you harassing him?

Mr. Roy: There is a debate as to whether one fellow has the right to ask at least once. The debate has not been conclusive. No, I do not think we go overboard. If someone, a man or woman, makes a proposition to another person it is not the end of the world. That is the way the world turns, as a matter of fact. Propositions are made and are refused. It is when retaliation occurs that it becomes serious.

Mr. J. A. Taylor: Could you leave with the committee a copy of those two volumes you have there? Is that possible?

Mr. Roy: I have difficulty understanding you.

Mr. J. A. Taylor: You indicated you have two volumes on the subject matter of the submission.

Mr. Eaton: I have already asked him and he said he can leave it.

Mr. J. A. Taylor: I gather you can leave a copy of that with our committee.

Mr. Roy: I want to check before I leave it that I have not made any caustic remarks. Sometimes we do not agree with everyone. It is here for your perusal.

Mr. Chairman: Could I just ask, if nobody objects, you indicated you go to court, that the action would be handled in the courts as opposed to a tribunal. Can I assume from that, then, that costs can be awarded for or against the commission?

Mr. Roy: Right.

Mr. Chairman: So if you take a case to the courts and lose, costs can be awarded against you.

Mr. Roy: Right. We have had many cases like that.

Mr. Chairman: Yes. Okay.

Ms. Copps: Is that included in the budget?

Mr. Roy: Yes, that is included in the budget.

Interjection.

Mr. Roy: It could easily go up, as some of the lawyers around the table here know.

Hon. Mr. Elgie: There is one question I wanted you to clarify. As I understand your act, the commission investigates and makes a decision itself about a reasonable settlement. If it is rejected by the respondent, then either you take the action to a court or the complainant may take the action to the court.

Mr. Roy: Right.

Hon. Mr. Elgie: I just did not want anybody under the misunderstanding that if you reject a complaint that complainant cannot take the action to a court.

Mr. Roy: When we reject a complaint the option is still open for the complainant.

Hon. Mr. Elgie: Oh, it is?

Mr. Roy: Yes, it is still open.

Hon. Mr. Elgie: Oh, it is, it is still open. That is not what I interpreted from here.

Mr. Roy: Yes, it is still open. As a matter of fact, a person does not even have to come to us. He or she can go completely outside of our circuit to the court. As a matter of fact, I explained earlier before you arrived, sir, that we rejected a complaint from a group of homosexuals concerning access to a hall in a Catholic school commission. Even though we had rejected it, they went to court and obtained a favourable judgement.

2:50 p.m.

Hon. Mr. Elgie: Likewise, if they decided to do it themselves, they could face the cost if they lost.

Mr. Roy: Right, but that is a very good thing. I think it gives people the freedom to express themselves before the courts, and not be at the mercy of a commission like ours. It's a good idea, as far as I am concerned.

Mr. Chairman: Just one other question: I have only just read through this briefly. I did not see anything in there with respect to special programs or affirmative action. Is there anything in your--

Mr. Roy: In our act?

Mr. Chairman:--that permits that?

Mr. Roy: We don't have anything specific with respect to affirmative action. We have always thought until recently it was illegal to undertake affirmative action programs, but we are rethinking the whole thing and we think perhaps there is a possibility. My personal idea is that it is a long shot, and it would be better if the Legislature speak out specifically and very forcefully on the matter. You will find in our brief that we are asking for the specific possibility of implementing affirmative action programs in Québec based on all grounds--not only sex, or the handicapped, the disabled grounds, but all grounds, including sexual orientation.

Mr. Eaton: Just to come back to the procedure again, somebody has complained to you, and you think they have a case. You have no power at that point to order, or to punish, anyone for what they have done. In other words, you know that employer has discriminated, but you have no power; you would have to take him to court.

Mr. Roy: Right, we don't do anything.

Mr. Eaton: You cannot fine him or anything.

Mr. Roy: The process of an investigation, as your own agency will be able to tell you, is in itself sometimes a little bit of a punishment, sometimes a little bit of an education process, sometimes a little bit of everything.

Mr. Eaton: You can get him to negotiate a settlement.

Mr. Roy: Sometimes settlements occur but an investigation, when it is well made, and I am sure that is the case in Ontario with the experience you have had and the fine people you have here--I am sure the process is a very positive one. Eventually, going to court is just because sometimes you have to put your foot down.

Mr. Eaton: Any information you have gathered as far as an investigation then would be available to both sides of the argument?

Mr. Roy: That is a nice question, because there is a problem. When you investigate as you do in Ontario, and as we have done until very recently in Québec, in an inquisitorial manner, that is, seeing one person, one witness at a time, not with anybody else around, although sometimes a lawyer is present, you tend to accumulate proof, evidence that belongs only to you as an investigator or as a commission. When you go to court you have your pockets full of information the other side does not have. That is not necessarily a very good way to handle it. I think that should be discussed and the merit should be appreciated eventually.

What we are trying to do right now is to hold hearings where people are in the presence of everybody else. When witnesses come and give their evidence they are heard by the other party, and the other party may cross-examine and may interfere in whatever way he or she wants. Eventually, when we go to court, the other party, the respondent, knows what we have. That may be disadvantageous in



a certain way to us, but we are government, a public body, an agency that works for everybody, not just for one section of the population. Actually we work for everyone. These are public funds we use and, therefore, I do not think we should restrict ourselves to one type of group.

Ms. Copps: On the issue of your findings, the anecdote you spoke of in the beginning about the two women teachers and the two men when they arranged a settlement of \$10,000, did the commission suggest that settlement or was that strictly between the two parties?

Mr. Roy: Frankly, I handled that case myself, because it was only at the very preliminary level. Through my usual process, I sent out letters saying we had complaints and this and that. We started an exchange with the respondents' lawyer through letters where he gave us a little information and we kept asking for further information. At one point, we received a phone call from the lawyer saying, "Well, we want to settle this and that's it." They just said, "Will \$10,000 satisfy the complainants?" and we said it was up to them, not up to us.

Mr. J. A. Taylor: I was just wondering the extent of the dollar value put on the infringement of human rights. Are there a lot of those kinds of cases where you can buy your way out of an infringement? Do you see a lot of that?

Mr. Roy: Yes, I am sure. People will sometimes be able to buy themselves out of a lawsuit by simply dishing out what they would have paid for their lawyer. With the cost of lawyers today, sometimes it is very expensive.

Mr. J. A. Taylor: I wasn't asking whether it was a bargain or not, I was trying to determine the frequency of cash settlements in terms of your work.

Mr. Eaton: Getting along without the lawyer is a good buy.

Mr. Roy: I believe in Ontario you have some very strict regulations with respect to how settlements come about. I believe your commission is very active with respect to what is acceptable and what is not acceptable in terms of a settlement. I don't want to interpret the commission, they can speak for themselves, but I believe, if I understand correctly, that they consider they represent public interest in an issue and they want to make sure one does not buy peace by paying a certain amount of money but still go on after that to discriminate. That is, the commission would go out and make sure there is a commitment not to discriminate further and there is a new policy established by the company that will forbid discrimination. That is well, that is fine.

In our cases in Québec, we are very sensitive to that kind of approach too, but sometimes, when you have the case loads we have and the Americans have, for instance, they take the attitude that it is better to settle on terms the parties are willing to accept and get on with something else.

Mr. J. A. Taylor: Is it frequent then in your case? Are there frequent cash settlements in Québec?

Mr. Roy: Yes, they are frequent in that they occur at least a quarter of the time we have complaints.

Mr. Chairman: Thank you very much, Mr. Roy. We appreciate your coming today at our request and taking the time.

Mr. Laskin is here. We indicated 3:30. I know of one member who indicated he wanted to be back at 3:30 and that was Mr. Riddell. He was going to be doing something with the CBC. Can we carry right on?

Mr. J. A. Taylor: I would think so, Mr. Chairman. At the risk of repetition, when he comes in possibly we could pursue at least part of the area we are interested in.

Mr. Chairman: Okay. I know Mr. Renwick is interested as well. There is no objection then? I would just as soon carry on and work right through. The second person whom we specifically asked if he would come before us to answer our questions is counsel for the human rights commission, Mr. Laskin, who I know has a tight schedule today because we were jockeying for a while, time-wise. John, we very much appreciate your being here.

3 p.m.

Mr. Laskin: Thank you for jockeying the time for me, Mr. Chairman.

Mr. Chairman: Mr. Johnston could not get in because could not get out of Sudbury airport, and Mr. Renwick, who is not here at the moment, had given me a few concerns. Did you get a copy of those?

Mr. Laskin: I do have a copy of those, Mr. Chairman.

Mr. Chairman: Maybe we could perhaps hold those until Mr. Renwick comes.

The committee wished to have you here so that we could ask you questions, Mr. Laskin, primarily concerning procedures that the human rights commission currently uses, and perhaps for an opinion of how the new Bill 7 might change, if at all, the procedures that the human rights commission follows.

Having said that, I will leave it open to questions. Perhaps we can wait for Mr. Renwick. I know he had some written concerns and Mr. Johnston did as well.

Mr. Laskin: Perhaps while we are waiting I can introduce, with your permission, Jim Stratton, who is the director of compliance and conciliation. Jim is here because if there is any particular factual administrative questions come up, he is in a much better position to answer it than I am.

I might clarify for the committee just exactly what my

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position is. It is true that I am counsel to the commission, but the committee may be aware that as of about two or three months ago, the commission has on its staff a full-time legal counsel. Presumably my role will be that much diminished if indeed it continues to exist at all.

I am also counsel only in a limited sense, because as the committee is, probably also aware, in respect of boards of inquiry, to which the commission is a party, generally those boards are carried by counsel from the Attorney General's department and on occasion by outside counsel in private practice. Since I have been counsel to the commission I have not personally done any boards of inquiry on behalf of the commission, although I have done some before. I am counsel in that sense.

Mr. Chairman: The two suspects we were referring to earlier have arrived.

Mr. R. F. Johnston: I apologize, Mr. Chairman. We were in Sudbury and driving back. Unfortunately we were fogged in. Mr. Chairman, I also have with me, on my right, Mr. George Brown, who you no doubt know is the executive director of the commission and has had a long association with the commission.

Mr. Chairman: Mr. Laskin has received the written comments that Mr. Renwick gave me. I suggested he hold those until you arrived. I will open up to questions then. If you wish to pursue those now, or if anybody else wants to start off, fine.

Mr. R. F. Johnston: I would be happy to start. You know what my questions were. I wonder if you could give us a systematic kind of outline of what the present investigative procedures are and then talk a bit about what is involved in training your people.

Mr. Laskin: By all means. Let me, if I can, take it in two stages because the procedures for investigating a complaint have been changed somewhat in the last two months, internally, in an effort to speed up the process and to promote earlier settlements of complaints. So, if I can step back a bit and tell you what the procedure has been, then I will tell you what the present differences are, which, in my judgement and I think that of the staff at 400 University, have significantly improved the process.

A potential complainant comes to the commission and has a personal interview. He cannot file a complaint or write out a complaint without a personal interview from the intake officer. Once that is done, and assuming the commission has jurisdiction, then the commission has no discretion; it must accept the complaint, and the complaint is filed. That is what the statute says, and that is what the Supreme Court of Canada told us about 10 years ago. Unless it is absolutely clear that the complaint is one that is completely outside the commission's jurisdiction, the complaint is filed and accepted. It is given a file number for administrative purposes.

It is then served on a respondent. It is served in one of two ways; it is either served by mail or it is served personally.



If it is served personally, it is always done by appointment. We do not send an officer out to catch a poor employer by surprise, or anything. The officer in charge of the investigation phones up and makes an appointment. He says, "A complaint has been filed." He comes down and says, "Here is the complaint."

An officer is then put in charge of the investigation. That officer basically goes out to find out all that he can about the complaint; not only from the respondent but from the complainant, from the complainant's family if that is relevant, from witnesses supporting the complainant if that is relevant, and also from the respondent.

If the officer goes out there, he will only go out there by appointment. He will want usually to do two things; to interview the respondent and any employees of the respondent or persons associated with the respondent who may have relevant information; and to look at and, if necessary, take copies of any documents.

Most of the time, and that is about 99 per cent of the time, we never have any difficulty with this. Respondents, by and large, are co-operative. We have never found, as a rule, that the respondents are there to obstruct our investigations. In the six or seven years that I have been associated with the commission, I cannot think of more than half a dozen cases where that has happened. Usually it is because a point of principle is involved--which we can deal with later if you wish.

We investigate. We interview people. The only rule we follow is that we don't like to have a respondent or his representatives there when we interview a witness, usually an employee. The reasons for that will be self-evident to you; we are concerned about reprisal, we are concerned about intimidation. That is really the only restriction. There is no question that employees have always had the right to have a representative or counsel there. It is usually not counsel so much as it is a union representative; some member of the family, a legal adviser or whatever it is. That happens as a matter of course.

Mr. R. F. Johnston: Often?

Mr. Laskin: Yes, often. Of course the commission has no objection to that. I think the officers have been very careful to make sure their inquiries and their interviews of witnesses do not interfere with the respondent's ordinary work day. If an employer, for example, tells us, "If you are going to sit here and interview my employees for three hours, I am not going to get any work done, I am not going to get any business done," we say, "That's fine; we would be happy to interview them after hours or on weekends--just tell us when we can do it and we will set up an appointment." We don't try to disrupt the business day.

With respect to documents, we ask for them; and if we don't get them, we politely withdraw. I think that is about the simplest way I can put it. There has never been a resort to a warrant by commission officers--not since I have been associated with the commission, which goes back to about 1975. We have never demanded documents; we have never said, "We can go in and open your files

and seize your records," and so on. As a lawyer I don't believe that power exists.

Mr. Eaton: Have you been refused?

3:10 p.m.

Mr. Laskin: Rarely, but there have been occasions when we have been refused. We have taken certain complaints against educational institutions, as an example, where promotion, hiring and tenure have become issues with respect to certain complainants.

Some of you may know that universities take a particular position on tenure files, that they are confidential files of the university. Our position has been that there is no such confidentiality. But in that case, we simply say, "That's fine." We withdraw. We try to negotiate some resolution with the solicitors for the respondent, and if we cannot do it, then we simply say, "Well, you will have to deal with it at a board of inquiry." That issue has not come before a board yet, but it is on its way right now.

Mr. R. F. Johnston: Is there ever any indication that the fact that the information is being withheld will be held against them by the board of inquiry?

Mr. Laskin: Never. The only sense, of course, in which it is held against them, is in the sense that it leaves the commission powerless to do anything other than to recommend the appointment of a board of inquiry.

If we do not get the documentation that we think we need to investigate a complaint, and make some decision on the basis of all information, then we are left in the position of saying: "We don't have any information. The only thing we can do is draw some inference that whatever information the respondent has may be helpful to the complainant"; or at least to say, "This is a matter that has to be aired at a board of inquiry because you put it beyond the power of the commission to make a recommendation on the basis of all information."

We can only recommend a board, summons the documents to a board, and if they object to producing them at a board of inquiry, we tell them: "You will have your remedies under the Statutory Powers Procedure Act. You will be able to move to quash the summons."

That will be dealt with in the ordinary course by a board chairman, and ultimately by divisional court if necessary--as indeed has happened in one or two cases; we have gone to the divisional court on precisely that issue.

I shall come back to your question about training in a moment. First, let me just finish the process.

We investigate. As you know, there is a statutory duty to investigate. Throughout the course of it, it is all being

recorded, so if the officer takes notes, the officer will be preparing the case file; there will be case reports on all investigations. If we take a statement from a witness, the witness gets a copy of that statement.

Mr. R. F. Johnston: When?

Mr. Laskin: As soon as the witness has signed it. Other than that, we take the position that our file is confidential, confidential to the commission and exempt from inspection by both parties.

Once the investigation stage is completed, we embark on the conciliation stage, which is also mandatory. In that stage the officer and his or her supervisor will have met beforehand and will have discussed and presumably developed some conciliation strategy. That strategy may suggest meeting the parties separately, or it may suggest meeting them together. Whatever happens, that strategy is proceeded with and the findings of the investigation are reviewed with both parties.

A process is then commenced whereby the officer--and supervisor, if necessary--and the parties try to effect a settlement of the complaint, as the statute requires. Two things are made quite clear to the parties at this stage. First, they can obviously have their legal advisers or representatives present during the conciliation process; and secondly, it is made perfectly clear to them that the discussions are entirely without prejudice.

So, if the matter is not resolved and must go to a board of inquiry, whatever took place during the conciliation process is in the same position as what takes place during a settlement discussion between lawyers, that is, it is completely privileged. It is not admissible at a board. A board chairman will never hear evidence of that discussion; and the rationale is exactly the same as in lawyers' discussions, to promote settlement.

If the conciliation effects a settlement, we draw up a memorandum of agreement to be signed by both parties. It is made clear to them that it is subject to ratification by the commission, because the commission takes that view that it has got to be satisfied that the settlement also promotes the objectives of the commission. Having said that, in practice I can think of only one case where the commission did not approve a settlement that had apparently been arrived at by both parties.

If it is settled, it is dealt with initially by a subset of the commission which we call the case review panel, which is three commissioners sitting weekly who deal with settled or withdrawn, dismissed complaints, not for the purpose of finally disposing of them but for the purpose of going through them so that they can bring them to the full commission and dispose of them fairly quickly. That happens in a large number of cases.

If the complaint is not settled and the parties are apart, then the officer will prepare a formal, written case analysis on the complaint which will summarize generally his or her



investigation, the position of the parties, the issues which are in dispute and so on, and generally will send that case analysis along with copies of the investigation reports to me as legal counsel.

Since I have been associated with the commission my job has been in large part rendering legal opinions to the commission on cases which have not been settled and which are in dispute. I get the file and I prepare a legal opinion and if there happens to be a legal issue involved, I try to give some judgement or assistance to the commission on what the legal issues are. If it is a factual matter I try to assess the evidence and we can discuss later, or now if you wish, the kinds of criteria which the commission generally follows.

In a nutshell, in most cases we are looking to see whether there is a *prima facie* case of discrimination, whether there is enough evidence to call upon the respondent to answer without making any prejudgement of credibility or the merits of all of the evidence pro and con, but is there enough evidence, has the complainant brought forward enough evidence to call upon the respondent to answer. If the answer to that question is yes, then my general practice would be to say there is a *prima facie* case of discrimination and in my judgement it is a matter that should be dealt with at a board of inquiry.

My legal opinion, along with the case file, then goes to the full commission. The full commission reviews the file, discusses it, they may call upon me for some additional information or an elaboration of my views. There are times when it has disagreed with me, and indeed I would hope so. That is healthy, but certainly there are many times they will disagree with me. They will cast a vote and make some recommendation to the minister.

As you know, under the present code the minister, in my opinion, has an independent discretion of his own to exercise as to whether or not to appoint a board of inquiry. Under the proposed Bill 7, presumably that would be taken away from him. Certainly the present minister has exercised his independent discretion on occasion and, indeed, commands the entire file before him and has the entire file, as the commission has, including the legal opinion.

If the matter goes to a board of inquiry, then a board chairman is appointed who is generally a law professor, someone independent. He conducts a hearing. When I first did boards of inquiry in the early 1970s there were one or two cases where respondents were appearing without counsel. In the last seven or eight years I can hardly think of a case where respondents were before boards without counsel.

In my opinion respondents have become very sophisticated about the operation of the Human Rights Code and fairly knowledgeable about its operation and so on. There has been a proliferation of seminars on human rights legislation. Most of the large law firms in Toronto now have at least one lawyer who devotes himself to human rights and labour related matters. My

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experience is they are pretty well aware of what is happening.

:20 p.m.

That is the overview as to how it was up until two months ago. I do know whether you want to stop here or you would like me to complete the picture by telling you of the new procedures which the staff have implemented in the last two months.

Mr. Renwick: I have no knowledge of this at all, never having dealt with a case as a lawyer on behalf of a complainant or respondent, but am I correct that the commission itself does very little other than to review papers and to listen to submissions from either its own staff or from you as counsel?

Mr. Laskin: If we are talking about the day-by-day case work of the commission, which I think you must appreciate, Mr. Renwick, is only one small part of the commission's function, I suppose the answer to that question fairly is yes. It only rarely, in my experience, has heard oral submissions from the parties. It has only rarely had the parties there in person before it arguing their position.

So in terms of its dealing with cases, it is dealing largely on the basis of my legal opinion, the case analysis and the case filed by the officer and whatever its experience in human rights matters. That is the information it has upon which to make its recommendation. Having made its recommendation, if there is a board of inquiry it is a party to the board. It is not in the position of deciding, it is a party to the board and will be represented there by counsel.

Mr. Renwick: I am speaking of the point in time up to when the commission, whatever that is, has effected a settlement or has failed to effect a settlement.

I suppose this is rather a strident or a harsh way to put it, but for illustration, is it fair to say the commission has become very much the slave of the staff, that apart from your intervention as outside counsel the so-called filing of the complaint is the process of the staff, the investigation is a process of the staff, the report and recommendation is a process of the staff, but the commission at some point, as I read the statute, has to deal with every complaint. Do they deal with every complaint or has it become a paper ritual that they go through and accept basically the recommendations of the staff?

Mr. Laskin: It is quite the contrary actually. Let me make a couple of points. You are certainly right that the staff does the investigation. I guess administratively that is now it would have to be. There is only one full-time commissioner, being the chairman. There are certain part-time commissioners but the rest of the commissioners will gather together perhaps no more than five or six days of the month at most.

Certainly in the past, number one, there are many officers who would not make any recommendation one way or the other. They

simply saw their function as an information gathering function so the file would come to the commission.

Mr. Renwick: When you say "the commission," to whom would it go?

Mr. Laskin: I mean the commissioners.

Mr. Renwick: Does it come to them assembled in a room in a panel?

Mr. Laskin: No, they meet monthly for at least two days a month. I would say one of those days is generally taken up with what I will call general policy matters. The second of those days, and obviously there are differences in time, but the second day will be taken up with actual cases.

Mr. Renwick: But the volume must be such that the amount of time the commission addresses to each particular complaint must be significantly limited.

Mr. Laskin: Not really, for this reason: over 80 per cent of the complaints are settled. That is the first thing I think you have to appreciate.

Mr. Renwick: Who settles them?

Mr. Laskin: Initially the officer and supervisor, with the parties and their representatives, but always subject to ratification by the commission. So the officer and his or her supervisor will go in there, will hold a conciliation meeting; will, let us say, settle the complaint; will draw up, as I said before, a memorandum of agreement which will be signed by the parties and will be subject to ratification by the commission.

That settlement then comes before three of the commissioners who sit weekly in a panel called the case review panel, precisely for the purpose of reviewing in-depth settlements that have been arrived at. Having reviewed it, they are then in a position to tell the full commission at its monthly meeting that they have gone over those settlements and in their judgement they think they are appropriate.

The full commission will have had the file and will have an opportunity to say to the case review panel that they do not think that is right. Indeed that has happened on occasion. They might tell them they are a little concerned about the settlement, why wasn't \$1,000 received in general damages instead of \$500, that sort of thing. That takes place at a full commission meeting.

Mr. Renwick: But I am very much concerned that the commission, which under the statute is charged with affecting the settlement and recognizing that they cannot do the investigation, must effect the settlement. I take it they do not ever have something called a hearing?

Mr. Laskin: On rare occasions. Just let me point out that section 14 as it now stands says, "A commission or an



officer." It is generally an officer who does the actual investigation.

We have on rare occasions held a formal oral hearing and let the parties come and make their submissions. I suppose the reason we do not do it more often is purely an administrative one. Because of the time factor you have mentioned, if we were to offer an oral hearing to hear every complaint that is not settled, then really you would have to have 10 full-time commissioners, I think it is fair to say, fully appointed with no other outside employment or work. They would have to be working five days a week. That is the only way you could do it. We have not gone to that system. What we have gone to is a de facto system that really anticipates the provisions of Bill 7.

To come back to your earlier point, my experience has been a far cry from the commission rubber-stamping either the officer's report, if indeed he makes a recommendation, or my legal opinion, a far cry from it. As I said before, and I meant it seriously, there have been many occasions on which they have disagreed with me. There have been just as many occasions when they have disagreed with the staff.

My experience has been that those commissioners take that job very seriously. I can tell you they are invariably prepared, have read the file, are fully conversant with it. We sometimes have some awfully heated discussions about case files, very heated discussions.

Mr. Renwick: I do not want to pursue this too long, but do each of the commissioners have a copy of the file available to them when they meet once a month?

Mr. Laskin: Yes.

Mr. Renwick: They have a complete file on every complaint they must deal with once a month?

Mr. Laskin: That is right. Including the legal opinion and the case analysis. They get that about a week in advance, so they will have reviewed it by the time they meet.

Mr. Renwick: What would be the work load on that particular day?

3:30 p.m.

Mr. Laskin: In terms of cases, Mr. Brown says about 30 or 40 and I think that is fair. But recognizing there are a number of them in which we found that the complaint is totally without merit. Going back to what I indicated before--and indeed I think it is one of the salutary recommendations in Bill 7--the commission has not at the present time any power to deal with frivolous complaints. It must investigate them in the same way it investigates any other complaint, so invariably you will find that of the 30 or 40 a good number of them really are totally without merit on the face of it, and they don't take very long to dispose of.

Let me tell you quickly what the new system is and what the changes are. The first change occurs at the initial stage before a complainant even has a personal interview with an intake officer. The staff now sends out a questionnaire--I have got a copy here that I will be happy to leave with the committee--to the complainant, which it asks that the complainant fill out and which, it is hoped, will provide the commission with much more detail about the alleged complaint than it has now. Part of the purpose of that questionnaire is to put more of an onus on the complainant if the complainant is serious about coming forward with the matter--to get the complainant to sit down and specify what it is he or she is really concerned about. So we get that questionnaire.

In turn we send the respondent a questionnaire. We ask for the respondent's position on the complaint. We ask the respondent to produce any documentation that may be relevant to the complaint and also to answer any specific questions we have that may arise from the complaint. The respondent is under no obligation to answer that questionnaire, no obligation whatsoever. But in practice I am advised that in the two months since it has been operating, respondents have almost always answered it. We have found that it has helped the process immeasurably.

Mr. Van Horne: It's made very clear in that form that they are not obliged to respond to the questions.

Mr. Laskin: Mr. Stratton will look at it.

Mr. Stratton: It's in the covering letter. We ask them if they would appreciate filling out the questionnaire. We don't tell them that they don't have to.

Mr. Van Horne: But it's not made clear to them that they don't have to do it.

Mr. Stratton: No.

Mr. J. A. Taylor: Is that simultaneously with the questionnaire that the complainant fills out? What I'm getting at is whether the person accused is in the position of knowing the nature and the particulars of the complaint before he is asked to respond.

Mr. Laskin: Yes. He will actually get three things: He will get a copy of the complaint that has been filed by the complainant.

Mr. J. A. Taylor: That has to be in writing.

Mr. Laskin: Yes. That has to--

Mr. J. A. Taylor: Because you said it has to be oral as well. You said there had to be an interview, but you didn't say--

Mr. Laskin: But it is reduced to writing.

Mr. J. A. Taylor: Then he signs that.

Mr. Laskin: Right. The complainant signs it. I have brought you a copy, which I can read. But there is a complaint form.

Mr. J. A. Taylor: So the accused gets a copy of that.

Mr. Laskin: The respondent gets a copy of that, and he gets this questionnaire. The third thing the complainant gets is a brochure that the staff has developed, which sets out the entire procedure under the code, indicates that you are entitled to legal counsel--a specific provision--and tells the whole process all the way through. So he will have those things.

Mr. J. A. Taylor: That's two. Is there a third thing you mentioned?

Mr. Laskin: Mr. Stratton tells me he also gets a copy of the human rights code. So he gets four things: a copy of the complaint form; this questionnaire, which he needn't fill out but does because it seems to help the process; the brochure on the procedures; and a copy of the statute.

Then what happens is that instead of this prolonged investigation right away, which went on until two months ago, what the staff has now instituted immediately is something that it calls a fact-finding conference, which takes place in two stages.

The first stage is a face-to-face meeting by the parties, with their counsel if they wish, with an officer and perhaps a supervisor. A discussion takes place as to the respective positions of the parties. That discussion is with prejudice, as is made clear to them, so it is not privileged. It is with prejudice. What they try to see is just how far apart they are and whether there is any prospect of a settlement, and if there isn't any prospect of settlement are there at least any facts or any issues we can agree upon--what's narrow and what's in dispute. If there is some indication that there is a kind of agreement that could lead to an immediate settlement then we proceed to stage two of this fact-finding conference.

Stage two is a conciliation meeting without prejudice, where we attempt to arrive at a settlement at a very early stage. In fact, as I understand it, this practice has been very salutary and has resulted in a large number of cases now being settled very early on, whereas up to two months ago we had to go out in our normal way and investigate.

Mr. R. F. Johnston: Do you have any figures on the percentage difference or anything like that?

Mr. Laskin: Mr. Stratton tells me it is much in its infancy, and they have only done about 20 or 25. But they've had about an 80 per cent success rate so far on the 20 or 25.

Mr. J. A. Taylor: What is the form for recording the



kitchen-table type of hearing that is with prejudice? Is there a shorthand reporter present? How is that handled?

Mr. Laskin: We have developed a form, which is called a record of statements and positions of respondents and complainants. The officer will simply list the issues that are in dispute, sit down with the parties and check off whether they affirm or deny each particular point, so at the end there will be a complete record of those issues on which the parties have agreed and those issues on which the parties are apart. This record is in written form and is available to both complainant and respondent as well as the commission.

Mr. J. A. Taylor: Is that the total of the matters that are with prejudice or is there something else in terms of, say, an investigator being present and then being in a position to use maybe other information gathered at that meeting, if I can call it a meeting, in a subsequent hearing?

Mr. Laskin: It could, and presumably he would be taking notes. The extent to which his evidence would be admissible at a subsequent board hearing, I guess, would be a matter for the chairman of the board. My experience has been that while technically, as you may know, under the Statutory Powers Procedure Act so-called hearsay evidence is admissible--that is, statements told by a party to an officer, so that the officer can get in the witness box and say, "The complainant told me this and the respondent told me this"--I find that most board chairmen less and less want to hear from officers if the parties are there. The usual answer--to me, at least, when I was doing boards for the commission--was, "Call your client, Mr. Laskin. Don't put the officer on the stand so that the officer can substitute for the complainant." The parties have to get in the box and give the evidence.

Mr. J. A. Taylor: But there are no tapes or other recordings.

Mr. Laskin: There are no transcripts. There are notes. Anybody is at liberty to take notes.

Mr. Van Horne: I would like to go back to Mr. Taylor's question. Who is making up this point form? It sounds almost like a score sheet that you have got going.

Mr. Laskin: It appears to be fairly close to that. The officer is making it up, but it isn't in final form until--

Mr. Van Horne: So it's his or her wording as opposed to the--

Mr. Laskin: Subject to this: that both the complainant and the respondent have to sign it, so presumably it is open to either the complainant or the respondent or his representative to change whatever wording or suggest whatever wording he or she feels appropriate.

Mr. Van Horne: Does that happen often? Do they get that

concerned that they want to change some of the wording before they will agree to it?

3:40 p.m.

Mr. Stratton: Yes, indeed. Sometimes they do want to change wording. Quite frankly, what my officer is trying to do is to get down in longhand as much information on what they are saying as he possibly can. Sometimes, when you're making an effort to do that and take part in the conversation, it's difficult to do, and changes have to be made in the record.

Mr. R. F. Johnston: What are your reasons for having this section of the conference held with prejudice and the second, the conciliation process, held without?

Mr. Laskin: I suppose there are two reasons. We consider it part of the investigation process as opposed to the conciliation process. Second, if the settlement is not effective, if this discussion breaks down, then at least we would like to be in the position of having narrowed the issues, so if we have got to go on in this matter and investigate fully, as we would have to do, then at least we are investigating far fewer issues. Ultimately when the matter comes to the commission it has fewer issues to deal with, and our judgement is that it will reduce the time.

One of the complaints--and I'm sure you've read about it--that has been made about the commission for a number of years was the backlog and the length of time. So our judgement is that it will likely cut in half the average time it takes to process a complaint, and that's part of the process.

Mr. Chairman: Before you go on, just so I am clear as well, there are two things. The parties get copies of the fact sheet?

Mr. Stratton: Yes, and any notes that we take. Whenever we talk to anybody and we take notes we ask him to do two things: to sign a copy, and verify that the notes taken are accurate. And he certainly can have a copy of the notes.

Mr. Chairman: And he can then have a copy.

Mr. Stratton: If I talk to one person I don't give his notes to somebody else. But if I interview you, you have a right to the notes I have taken.

Mr. Chairman: I would just ask one more question, Mr. Laskin. These procedures you're outlining, you feel, are acceptable or comply with the intent of both the old bill and the new bill. Am I correct?

Mr. Laskin: In my judgement, yes. Their efficacy is something I am far from skilled to tell you anything about; but they have been studied, particularly by the staff and also by the commission, for a number of months, and I think we have looked at various systems, even those in the United States and in other

jurisdictions, and made a judgement that this was the most effective system.

Those are really the changes. If we don't settle then we investigate in the normal way; if we do settle it comes up in the normal way.

The one thing I should also have told you about the whole process is that the commission de facto for at least a year, if not more, I think, has been giving reasons in all cases in which it recommends either against or for a board of inquiry. So you will know that although that section is proposed in Bill 7, as a matter of practice the commission has been doing that for at least a year and has been giving reasons. So that's the process.

Mr. R. F. Johnston: Can I ask you one question about the questionnaires? We haven't seen one. It would be good if we could have all these forms tabled so we could have a look at them.

Mr. Laskin: Sure. Why don't I do that. What I have brought is a complaint form and the intake questionnaire, and then there is a separate follow-up questionnaire for each complainant, depending on the category of alleged discrimination. So there is a separate one for accommodation, services and facilities, one for housing and one for employment. Then there's a respondent's questionnaire, there's the brochure explaining compliance procedures and there's the statement of positions. I'm happy to leave copies of all of those.

Mr. R. F. Johnston: Thank you very much. The question I had about the questionnaire without seeing it is, If you have only had 20 to 25 of these that you have been through entirely--but probably more questionnaires than that have been filled out--how is it for people with English as a second language to deal with these kinds of questionnaires? As we get more and more into written statements, I would be interested in knowing if that causes problems.

Mr. Stratton: One of the things we are very much concerned about is that the questionnaire not become a stumbling block for complainants, and it is up to the intake officer to try to assess the ability of the person to fill out the questionnaire.

Just as a corollary to that, we also thought the people who came in personally to the human rights commission and wanted to make their complaints that very day would be very offended about being handed a questionnaire. We are finding that the reverse is true, that people want to take the questionnaires; they want to take them home to fill them in at their leisure and come back. This is particularly the case with people who have language problems. In most families where English or French is not the first language--so we can give them the questionnaire--there is somebody in the household, the eldest daughter, the son, the brother-in-law or somebody who helps a family that doesn't speak English well in all sorts of things; so they sit down around the kitchen table. We are getting them filled out in great detail, both by complainants and respondents.



Mr. R. F. Johnston: So you haven't had any occasion to worry about somebody's case being prejudiced essentially because of their inability to express themselves in English well, where you get something that is virtually incomprehensible because of an inability to express themselves in writing especially but probably orally as well?

Mr. Stratton: Then we would simply revert to the normal face-to-face oral interview.

Mr. Laskin: Before I complete that--I am sorry, Mr. Jonnston--may I just file two other documents that both relate to the fact-finding conference?

The first is the notice which is sent out to both parties and which advises them of the time, date and place of the fact-finding conference; it tells them what the purpose is, their right to legal representation and so on.

The second is a copy of a statement which the officer reads out at the beginning of the conference to tell the parties again what it is about.

Do you wish me to deal with this point about the training of investigators?

Mr. R. F. Johnston: Or you could go on to something else. I have to step out for a couple of minutes, but I would like to know about that.

Mr. Chairman: We will accommodate you, Mr. Johnston.

Mr. R. F. Johnston: Thank you, Mr. Chairman.

Ms. Copps: On the point that you have raised about frivolous complaints, how do you determine what is frivolous? Do you have any conditions that determine frivolity?

Mr. Laskin: There are no criteria or conditions other than that a common-sense assessment of the evidence gathered in some cases tells you very clearly there just isn't any substance to the complaint. Indeed, in many of those cases we will go back to the complainant and say: "Look, we have investigated your complaint. Here is what we have found, and there just isn't anything there." Invariably, the complainants will agree with us and instruct us to withdraw the complaint.

Ms. Copps: How then do you account for the case of Bhadauria (inaudible) Seneca College?

An non. member: We can't hear you.

Ms. Copps: How do you account for a person who believed her complaint was so just that she took it all the way to the Supreme Court when in your investigation you did not call a board of inquiry?

Mr. Laskin: I could be wrong, but my understanding of

that case is that in respect of the complaint that formed the subject matter of her law suit she did not come to the commission; she went to the courts. She had come to the commission on other occasions with other complaints, but she did not come to the commission with the specific complaint that went all the way to the Supreme Court of Canada; she instituted a law suit. Indeed, you will note in the judgement of the Supreme Court of Canada, I believe, that the Supreme Court of Canada makes the point that she didn't go to the commission.

Ms. Copps: Perhaps the scenario was the same, because the number of instances involved applications for employment with the same institution; a number of applications were made over a period of time.

I just wonder what your response would be to criticisms that the new code should provide the alternative to the commission through the courts. As has just been stated by Mr. Roy, who represents the Quebec Human Rights Commission, they have the option in Quebec either to go through the courts or to go through the commission; apparently it works fairly well in either pre-board of inquiry or post-board of inquiry situations. I wonder if you have any feeling on that.

3:50 p.m.

Mr. Laskin: I will give you my own personal feeling on it. I don't know whether it's the commission's feeling; I don't think it is the commission's feeling.

Let me say I consider it a very difficult question, and I go back and forth on it; but if I had to come down on a side, I think I would come down on the side with no recourse to the courts. I suppose I come to that opinion--and I may be completely wrong in practice--because, if there is another recourse open or available to complainants, I have some concern about the extent to which the settlement processes of the commission internally will be impaired.

On the other side of that, you can say there are lots of cases in which parties have alternative remedies. If you are dismissed from your employment and you think it's because of discrimination, you don't have to come to the commission; you can issue a writ for wrongful dismissal. If you are member of the union and you have been discriminated against--and most collective agreements, as you know, have nondiscrimination clauses--you can file a grievance.

Ms. Copps: There are also cases of people who do go through the courts and who settle before they actually reach the courts.

Mr. Laskin: Sure. But let's put it this way: It seems to me there are very rare instances in which recourse through the courts by civil action is going to have any practical utility. Why do I say that? Because all your dismissal cases are covered by wrongful dismissal actions. All of your terms and conditions of employment cases, if it's a collective agreement and if there is a union, are covered by the terms of the collective agreement. So in

employment terms you are really only talking about those cases where you are refused a job in the first instance. If you apply for a job and you are turned down, you don't have a civil action for that.

Ms. Copps: As a lawyer, I think that argument is somewhat specious. How many people are exactly in that situation? That was the case of Bhadauria; she was denied employment. And there are probably hundreds of people every day who face that situation. To say that because there are only a few cases we shouldn't allow it in court is not legally tenable.

Mr. Laskin: No, I am not saying that is a reason why. I am just addressing the question as to how practically useful it is. But let's deal with Bhadauria.

Bhadauria, in my judgement, went to a forum that was going to be far less sympathetic to her concern than where she could have gone. It seems to me that if you have to choose between the courts and the human rights commission to get a sympathetic hearing for a complaint of discrimination, you are far more likely to get it from the human rights commission, which has had a long experience and basically an innate sympathy for complainants, than you are to get it from the courts, which are not used to dealing with allegations of discrimination and so on.

Ms. Copps: I think the previous deputation from Quebec would also belie that argument, because the Quebec Human Rights Commission entertained an argument of discrimination on the basis of sexual orientation which was not upheld by the commission but was subsequently upheld by the courts.

However, you raised the issue about collective agreements and the nondiscrimination clause in collective agreements. A number of people who have come to the committee have raised the concern that you could be placing employers in a double jeopardy situation. How does that apply at present? If a person argues through a collective agreement, can he then come to the commission; and is it entertained?

Mr. Laskin: A good question, and it's a problem that has bedevilled the commission for some number of years. The view I have taken is that, since there is nothing in the statutory language of the code to preclude the filing of a complaint while at the same time pursuing another remedy, there is nothing to preclude it. Our judgement has been that, if the complaint is filed and none the less that complainant is also, for example, taking grievance proceedings, we must accept the complaint and investigate it.

There are certain instances where, if the arbitration is very far advanced, we have deferred our resolution of the matter, hoping that the arbitration process will resolve the situation. But we have always kept to ourselves the residual discretion to proceed with the matter if we are not happy with the outcome of the arbitration or if we do not feel that the arbitration addressed the problem of discrimination.



Having said that, I should tell you that there are some lawyer colleagues of mine on the management side who strongly disagree with that position and have finally challenged that position and are taking it to the divisional court. They are taking the position that you cannot put respondents in jeopardy twice, that you have to elect your remedies and that there ought to be a stay of proceedings of the code if, indeed, you foresee arbitration.

As far as I know, the matter has not been decided by our courts. There is a decision in the United States Supreme Court dealing with Title 7 which says you can do both, and we have essentially followed that.

Ms. Copps: How many (inaudible) do you have--

Mr. Laskin: Officers?

Ms. Copps: I guess officers and--(inaudible), since you have mostly part-time, I guess you cannot divide them into--

Mr. Laskin: Jim and George can help you better than I, but I think they told me that we now have 28 officers. Then we have got supervisors on top of that. How many supervisors would there be?

Mr. Stratton: We have 28 investigating officers in the compliance program, six supervisors, one person who is called the administrator of field services, and myself.

Ms. Copps: How would that--obviously it would not compare--the reason I asked you that is that the Quebec commission was also asked about the numbers of staff people, and they have somewhere in the neighbourhood of 47 staffers who are involved with what would be called education, research and information rather than enforcement and investigation.

Mr. Brown: That is not the total staff of the commission. We also have a race relations division.

Ms. Copps: That is what I am asking you. What is the staff of the commission?

Mr. Brown: The total staff is 72, including support.

Ms. Copps: How would that be broken down? How many people are involved with the race relations division?

Mr. Brown: Fifteen.

Ms. Copps: And what is your annual budget?

Mr. Brown: I think it is now in the region of \$4 million, including the race relations division of the commission.

Ms. Copps: Do you feel that the commission should have more staff resources development in the area of education and information, as opposed to enforcement?

Mr. Brown: The race relations division of the commission essentially does not do any case investigation per se. Most of their work has to do with educational work. We do not have a separate division in the commission that addresses education in the pure sense. Our people are more multipurpose in the sense that they carry out the work of investigation, compliance, et cetera, but at the same time they carry a heavy educational responsibility.

Ms. Copps: The reason I asked that is that, although the race relations division is obviously an important (inaudible) of your work, I was surprised to hear Mr. Roy of Quebec say that a major number of their complaints emanate from the areas of sex discrimination on the job and not from other areas. He gave us some statistics as to the breakdown, and racial discrimination accounted for about 11 per cent of complaints. How does that compare with your breakdown?

Mr. Brown: It is higher in Ontario. Racial discrimination has always topped the statistics in Ontario. I think it is about one third.

Ms. Copps: Can we have those statistics as to the breakdown of complaints?

Mr. Brown: Yes. And I think sex follows hard on the heels of race. Sex is about--

Ms. Copps: Did you also field complaints on the basis of grounds that are not necessarily delineated in the present code; for example, minor sports participants? And I understand that we also sympathetically lent an ear to sexual orientation disputes, although you do not pursue them.

4 p.m.

Mr. Brown: There are several areas. We deal with a lot of complaints that we call informal, which do not lend themselves to legal enforcement. For example, a lot of the cases now that deal with the handicapped we do through informal investigation and try moral suasion to get a resolution. We would do the same thing if somebody came to us and said he or she was booted out of a hotel or motel because of sexual orientation. If a person came to us, we would try some educational mediation.

Ms. Copps: So you will try to mediate?

Mr. Brown: That's right.

Ms. Copps: Also, if you are able to provide those statistics, do you have a breakdown of those informal complaints?

Mr. Brown: Yes, we have some of them.

Mr. J. A. Taylor: Are those informal because they are outside your jurisdiction? Is that what you mean by informal?

Mr. Brown: That's right.

Mr. J. A. Taylor: But you take them seriously even though you do not have jurisdiction?

Mr. Brown: No. Suppose it is a case of somebody suffering from epilepsy, who says he applied for a job and was denied a job on that ground. We would make a phone call to the employer and if he says, "Get lost," there is nothing we can do. On the other hand, if he wishes to know more about the subject matter or wants to discuss that person's options, if he has a certain fear about epilepsy, we could arrange for an association to talk with him about that particular problem.

Mr. J. A. Taylor: I am not forming a judgement or being critical. What I am pointing out is that there are other institutions, such as the Ombudsman, for example, where there may be legitimate or illegitimate complaints, but they are outside the bounds of the jurisdiction. In the case of the Ombudsman, it may be a municipal matter as opposed to something at the provincial level or it may be federal, and they may have to deal with that at another level. My question is: How far do you go in terms of public relations, if I can put it that way, in pursuing a complaint of that nature? I guess that is about all it is, public relations, if you don't have jurisdiction to handle it.

Mr. Brown: Yes.

Mr. Laskin: As Mr. Brown says, it is no more than moral suasion or a public relations exercise.

Ms. Copps: How does that apply to the judgement that was rendered in the case of the minor who wanted to play in a male hockey league?

Mr. Laskin: You are looking at the unsuccessful counsel in that case.

Ms. Copps: Was that because it was a service?

Mr. Laskin: We considered that a case where there was an issue as to jurisdiction, but our judgement was that there was a pretty good argument that we had jurisdiction. It was not a case where we felt we were clearly beyond our jurisdiction. So we took the complaint and we proceeded with it. We lost ultimately in the Ontario Court of Appeal on a very technical ground, which you will appreciate as a lawyer. They said to us that because the Ontario Minor Hockey Association is not an incorporated body we could not sue an unincorporated association.

That is also a matter that Bill 7 proposes to remedy. On the substance, on the merits, because there was a companion baseball case that did not have the technical defect, the majority of the Court of Appeal, with one judge dissenting--one judge did find in our favour, two against--said yes, it was not a service. It was not "accommodation services and facilities" as that phrase has been used in section 2.

Ms. Copps: As the commission lawyer, would you personally review every case that comes before the commission?



Mr. Laskin: No. When I say I am the commission lawyer--

Ms. Copps: Do you have a job too?

Mr. Laskin: I am in private practice. I am not on staff at the commission. I will review and give a legal opinion on or I will have an associate helping me give a legal opinion on all those cases coming to the commission that have not been settled or withdrawn.

Ms. Copps: The reason I asked that is because you may have an understanding of the issue of warrant searches. I believe that most lawyers who have appeared before the commission to date have stated that they do not feel the obtaining of a warrant would impede the function of the commission investigators. I just wonder whether in your experience--

Mr. Chairman: It is very difficult down here to hear you.

Ms. Copps: My question is whether the obtaining of a warrant would impede the investigation of complaints, speaking as a lawyer who has reviewed the cases that come before the board of inquiry?

Mr. Laskin: Would it impede investigation? It's hard to say, but my sense of it is that a warrant in my mind, as a lawyer, conjures up the whole criminal law process and power, which is precisely not the image or the perception we are trying to create. Because the last thing in the world we want this process to be conceived of as is anything akin to a criminal process. I mean it is--

Mr. J.A. Taylor: Although the results can be worse in terms of punishment.

Mr. Laskin: No, with respect. There is no such thing as punishment. There is compensation.

Ms. Copps: The question is, then, one of image rather than legal substance.

Mr. Laskin: Well, it may be a couple of things. But the perception may be very important in getting respondents to co-operate. When you come to a respondent with a warrant, in the respondent's mind it conjures up the criminal law power and process. What we are trying to encourage is conciliation, and we are trying to encourage some educative function. So that by going in there, simply as a human rights officer, without that, we think we would achieve a better measure of co-operation. Now you may also have some nice argument, I do not know--

Ms. Copps: The reason I ask is that there have been two suggested amendments to the proposal, which we have actually not seen in legalese yet, but they would include one of two options: One, that the respondent would go straight to the board of inquiry; two, that you would return with a warrant. I wonder if you, as a lawyer, would be comfortable if the first alternative or condition, i.e. going straight to a board of inquiry, was be

removed, and in the case of objection by the respondent, a warrant would be garnered.

Mr. Laskin: I would only be comfortable in this process with a warrant as the very last resort, and it would be hard for me to conceive of very many instances, if any, where I would want to resort to it. It would stand for me in the same kind of category as the prosecution sections under the present code, which, since I have been associated with the commission, have never been resorted to. It is just not a criminal process, and if we are refused something, and we have on occasion been refused something, we try to work out a solution.

Ms. Copps: I would remind you that the other alternative being proposed is that the respondent go straight to a board of inquiry. What is your feeling on that?

Mr. Laskin: My feeling on that is, in a sense, the same feeling I have about the present investigative processes. They are there for their deterrent effect; they are there to give some teeth to the officer when he goes. But, as Dean Tarnopolsky said, it is the iron hand in the velvet glove. The powers are there, but you will find that the officers are very gentle in the exercise of their investigative processes. They are armed with the statute, if you will, and simply by virtue of having it there, they are enabled, in my judgement, to carry out their investigative powers much more gently and politely than if they did not have it.

Ms. Copps: Would that same velvet glove not apply in the instance where the ultimate issuance of a warrant would be at stake?

Mr. Laskin: I am not certain I understand what you are suggesting.

Ms. Copps: We are being offered two options: One is to go straight to a board of inquiry; the other is to get a warrant. If the first option were eliminated, would not the eventuality of a warrant also be able to be applied in the same way, the velvet glove in the iron fist or the velvet fist in the iron glove?

4:10 p.m.

Mr. Laskin: I may have got the phrase wrong myself too so don't worry about it.

Ms. Copps: I mean you may not run into that many circumstances where the respondent demands a warrant (inaudible).

Mr. Laskin: Sure, but I guess ultimately you have to consider what is the best way to ensure co-operation and get the parties together to negotiate and conciliate. The judgement of the minister, and my own personal judgement, is that the correct judgement is to have the deterrent effect of a board of inquiry there. As a matter of practice, we have done that in cases where we have been met with obstruction in the investigation and it has been proved very salutary in getting the parties together for the most part.

we can always say to the parties, "Look, if you are not prepared to co-operate with us, and sit down and give us what we need and let us interview our witnesses, you have really left us with no alternative but to recommend a board of inquiry." We say, "Look, you are throwing away an opportunity to have the commission sit down and give a reasonable judgement which may inure to your benefit, which may get rid of this case right away without having you go out and hire a legal counsel to spend four days at a board of inquiry." You would be amazed how quickly that gets parties to the bargaining table and gets them to disclose their information, very quickly.

Ms. Copps: On the issue of sexual orientation, you do entertain some depositions or whatever on a kind of an informal basis?

Mr. Laskin: I think if it is done it is very informally, because certainly the commission's view is that it's not a variety of sex discrimination. Therefore, certainly no formal cases come up.

Ms. Copps: But it was just mentioned that you also cover the area of the handicapped even though it is not an included area under the present code.

Mr. Laskin: On a very informal moral suasion basis.

Ms. Copps: Okay, in your experience, do you have cases? One of the questions that has come up regarding the inclusion of sexual orientation has been whether in fact there are sufficient cases to warrant its inclusion as a specific prohibited ground for discrimination. In your experience, would you say there are or not?

Mr. Laskin: That is hard to answer because there may be many prospective complainants who are not going to come forward because they know the commission is liable to say, "Sorry, no jurisdiction."

Ms. Copps: I understand that, but obviously you've fielded a number of informal complaints on the area of the handicapped and also on the area of sexual orientation. You must have some feel for it. I mean you are working in the field of discrimination.

Mr. Laskin: There are complaints out there, I am sure. If one were honest about it, there would be as many complaints on the ground of sexual orientation as on some other grounds of discrimination.

Ms. Copps: Are there sufficient for it to be included as a prohibited ground of discrimination?

Mr. Laskin: I don't know whether that is the test, whether it is sufficient to be included. I don't know what the test is as to what one includes on grounds of discrimination.

Ms. Copps: You have stated it is certainly comparable to other grounds of discrimination.



Mr. Laskin: If you are talking about numbers, but numbers may not be the criterion.

Ms. Copps: Okay. In terms of simple numbers, there would be--

Mr. J. A. Taylor: Mr. Chairman, could I ask a supplementary in regard to that: when you get a complaint about sexual orientation, would you consider that a nonjurisdictional complaint?

Mr. Laskin: Yes, if somebody wanted to file a formal complaint of sexual orientation, we would not take the complaint.

Mr. J. A. Taylor: Could I ask Mr. Brown whether that type of complaint would be pursued as other nonjurisdictional complaints might be pursued?

Ms. Copps: Informally.

Mr. J. A. Taylor: Informally.

Mr. Brown: Informally, as I mentioned before. You may just wish to talk to somebody.

Mr. J. A. Taylor: Do you or does your staff do that?

Mr. Brown: We do not. If you are talking about the allocation of resources to informal complaints, in comparison to formal complaints, the answer is no.

Mr. J. A. Taylor: I wasn't talking about allocation of resources. I was going to get into that though.

Mr. Brown: I am talking about staff time.

Mr. J. A. Taylor: Do you open a file on something like that?

Mr. Brown: No, we just get a statement from the person, just a little note of what happened.

Mr. J. A. Taylor: Is that statement processed like other statements so it eventually goes before the commission?

Mr. Brown: No, those cases do not go before the commission.

Mr. J. A. Taylor: Then statistically are they included in terms of your total intake, coming up with the number of complaints that you service during the year?

Mr. Brown: No, we would have a column in those statistics which is called informal complaints, so they would be punched together, whether it is a case dealing with the handicapped or whatever, you may have 20 informal complaints but it would not be broken down into sexual orientation.

Mr. J. A. Taylor: But you do have a separate column for what you call informal complaints for statistical purposes?

Mr. Brown: That is right.

Mr. Riddell: Perhaps this question was asked, and if it was then just ignore it, I will read it in Hansard. If this bill becomes legislation, and I trust it will if it ever gets out of the Tory caucus--

Mr. Renwick: That is a switch.

Hon. Mr. Elgie: You do not have any problem here. You are in total agreement, is that what you are saying? Will the record show that?

Mr. Riddell: --do you foresee the commission being swamped with complaints and test cases, and if so, how many people are we looking at in order to handle all these complaints? Talking about the human rights commission, boards of inquiry, and things like that, how many people are we looking at, in your view?

Mr. Laskin: You may have asked the wrong person--I think Jim and George would have to help me--but in terms of whether we are going to be swamped I would have thought not. I would have thought the one question area obviously is handicapped, because that is the one significant additional ground of discrimination.

While there are specific provisions, for example, for sexual harassment, as you all probably know, we have been accepting complaints of sexual harassment and processing them for some number of years on the basis that they constitute discrimination with respect to terms and conditions of employment. So you will not get any increase there.

There are, obviously, some additional grounds of discrimination in Bill 7, but it seems to me they of themselves are not going to increase the work load of the commission. I reserve on handicapped. I really have no sense of just how many complaints we are looking at in that area. Jim and George may be able to help you out on that.

Mr. Brown: We have made projections on what additional staff might be required and I think we came up with about 38 for all the grounds, in addition to what we have now. That is our projection. Given the newness of the bill, we do not know. Mr. Laskin has indicated that handicapped might be an area which will need a lot of resources. When I am talking about resources I am talking about staff time because of the various coverages and the newness of it in terms of testing the feasibility.

Mr. Havrot: Yes, I think that was indicated earlier by Mr. Roy from Quebec. He mentioned that disability complaints are on the increase. I think it is 10 per cent at the present time, but they are expecting a dramatic increase this year over last year, a significant increase in the number of complaints.

Mr. Brown: Right.

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Mr. Riddell: By reason of your position, how careful do you have to be in answering any questions I might put to you? Do you have any reservations at all?

Mr. Laskin: I have no reservations unless you get me into the advice that I may have given to the commission on specific cases, in which I would have some problems because of my professional obligations and solicitor-client privilege, and so on. Apart from that I can do my best to deal with your questions.

Mr. Riddell: Are you concerned with any sections of this bill?

Hon. Mr. Elgie: What was the first question?

Mr. J. A. Taylor: That was an easy question.

Mr. Laskin: Am I concerned?

Mr. Riddell: Would you like to see some sections deleted? Would you like to see some sections amended? Are you happy with the bill as it is presently written or drafted?

Mr. J. A. Taylor: Let the record show ecstasy.

Mr. Laskin: I will tell you quite honestly, in general terms, I think it is the best piece of human rights legislation I have ever seen from any jurisdiction, and I have seen an awful lot of them. To answer your other question, yes, I would be less than honest if I did not tell you there are a couple of sections which in my judgement I would like to see changed, but not everybody would agree with me.

4:20 p.m.

Mr. Riddell: Are you free to tell us what your concerns are?

Mr. J. A. Taylor: He is available to tell you, but he is not free.

Mr. Riddell: Are you satisfied with the search and seizure section of the bill?

Mr. Laskin: I don't believe there is a search and seizure section in the bill. There isn't a search and seizure section in the bill, in my opinion. There is a right to enter premises and a right to demand, and in the minister's revised statement request documents, but that is not a search and seizure provision. As a lawyer I am familiar with search and seizure provisions. One can go to the Combines Act or the Income Tax Act and see search and seizure provisions, but that is not there.

Mr. Riddell: Why is there so much concern then with the general public? Why did the police come in here and say, "For God's sake, you are doing something we haven't even got the power to do"?



Mr. Laskin: I didn't have the benefit of hearing the police. With all due respect to the police, the police have enormous powers that the human rights commission doesn't have. We don't have wiretap provisions here. These are administrative procedures and I am sure you have heard the argument before and you have seen it; you have heard it from the minister and seen it in the papers. These provisions exist in innumerable administrative statutes in this country. They have been on the books in this legislation for 30 years. It absolutely astounds me, quite frankly, that people, whoever they may be, are upset about them. I say that quite frankly and quite honestly to you. I just don't understand it.

Mr. Riddell: Would you have any objections or concerns if sexual orientation was included in this bill as prohibited grounds for discrimination?

Mr. Laskin: No. You will note that Life Together, which was the commission document some years ago, recommended it.

Ms. Copps: If that is the case, how can you say that this is the best piece of human rights legislation that has ever been in any jurisdiction when your own report outlines certain areas that have not been even considered in this bill?

Mr. Laskin: Well, that doesn't equal perfect. No piece of legislation may be perfect to the people who perceive it, but if you are asking me, I have looked at innumerable pieces of human rights legislation, not only the ones in this province but many in American jurisdictions, and my personal judgement is that this is the best code that I have ever seen.

Mr. Riddell: How do you feel it compares with Quebec legislation?

Mr. Laskin: I believe it is an improvement on Quebec legislation. It seems to me there are a number of significant provisions in this documents which just don't pertain elsewhere. It is not just my view; it is the view of my colleagues in the private bar who have been particularly associated with human rights legislation. I speak of John Sopinka, who is senior to me and who has had a much longer experience with the Human Rights Code than I have. It is certainly his view as well as mine. It is a view that is shared amongst a number of people.

Mr. Riddell: Let me get back to my question which is maybe going to present the most difficulty for you. For the benefit of the committee, if you were to change this bill, where would you change it? You said there were some areas you would like changed and this is what we are here to find out.

Mr. Laskin: My personal view and not the commission's view?

Mr. Riddell: Right.

Mr. Laskin: It is only my lawyer's mind but right now I have one problem with the sexual harassment provision. Quite

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frankly, if it were up to me I wouldn't define harassment because it seems to me you are defining a word that is too well known to take an example, and it seems to me may be imposing a standard that is too stringent. That is my own judgement.

We have got along quite well so far with no specific direction to sexual harassment, just dealing with it as an element of terms and conditions of employment. Our board chairmen have had no difficulty in dealing with discrimination on the basis of sexual harassment within the context of the present code. I have some concern about the way it is at present worded. I have some concern about the interrelationship between section 4 and section 6. That is one example.

Mr. Riddell: Before you leave sexual harassment, we have had some groups in who feel that "persistent" should be dropped. would you agree with that?

Mr. Laskin: "Persistent" is in the authority provision and not in section 4(2). The general harassment provision does not have the word persistent. "Persistent" is in the sexual solicitation provision relating to persons in authority. I do not know what the thinking was, but I can speculate that it may have come directly from the judgement of the Supreme Court of Canada, which used the word persistent in relation to sexual solicitation. It is hard to quarrel with the judgement of the Supreme Court of Canada. If the Legislature is just trying to be consistent with that kind of thinking, it is hard to quarrel with that. It is not in section 4(2), which is the general harassment section, which stays.

If I had to make an argument on harassment, I would say that when you define it as meaning engaging in a course of vexatious comment or conduct, you may be limiting it too much. The other side of the coin would be that we want to discourage frivolous or vexatious complaints of harassment and therefore we defined it in this way precisely to avoid that. That is certainly a legitimate concern. I have no quarrel with that. One could argue both sides of that case.

Mr. Riddell: I interrupted when you said you have difficulty with, I believe, the interrelationship between 2 and 4. would you elaborate on that?

Mr. Laskin: Four and 6. Section 4(2) talks generally about freedom from harassment in employment. Then section 6 specifically talks about sexual harassment or solicitation. I can just envisage some lawyer for a respondent coming forward at a board of inquiry some way down the line and saying, "The Legislature has specifically addressed sexual harassment in section 6, so that must mean that in section 4 they are talking about harassment other than sexual harassment."

Lawyers can dream up all kinds of arguments. That clearly is not, I do not believe, the intent of the minister in introducing the bill. But that kind of argument is open. One would hope there might be some clarification to eliminate that kind of thinking.

Mr. Riddell: A good point. Okay, carry on. What are some of the other points?

Hon. Mr. Elgie: Remember what legal advice is worth when you are not paying for it.

Mr. Laskin: All right. Let me go to section 10. Section 10 is the so-called constructive discrimination section which you people have probably heard about, which in my view is a very salutary section that addresses this specific problem: An employer has a general employment regulation--let us say his hours of work are nine to seven Mondays to Fridays, and it so happens that certain people, because of their religious beliefs, cannot comply. The employer has no intent to discriminate against Orthodox Jews, Seventh Day Adventists, or whatever it may be, but the effect of his general employment regulation is to discriminate against that group. Section 10 addresses that problem.

We have had case law which has said in that circumstance it is discrimination. We have had certain board decisions which have gone that far. My own view is that it is questionable whether they would stand if they were tested before the divisional court or a court of appeal because there is no supporting legislation. Bill 7 addresses that problem. I could make the argument that perhaps it does not go far enough. Maybe it should go as far as the American position and place a positive duty upon an employer to try to accommodate to the minority beliefs, for example, of Orthodox Jews or Seventh Day Adventists.

This situation, the way it is presently worded says it has to be "reasonable and bona fide." I am sure you will have the Canadian Jewish Congress argue that you have got to go farther than that, you have to say the employer has a positive duty to try to accommodate the Orthodox Jews, or so on. They make that argument and I am personally kind of sympathetic to that argument. But that is, in a way, a small point.

4:30 p.m.

I have always had problems with the private clubs section, section 18, which is a very basic, philosophical, tough issue in the code. I would like a section that has a broader attack on private clubs. I am not as happy as I might be; I am not happy that the OMHA, for example--leaving aside private clubs--that the entire minor hockey association will still be protected under the umbrella of section 18. Having been the losing counsel in Cummings I would like to see a section which would allow me to get at the OMHA, because I don't think it is right.

Mr. Riddell: I think he is making some good points here, Mr. Minister. I hope you are jotting them down.

Hon. Mr. Elgie: I am taking them down for you so you can go home and preach about it. I want to hear you selling it, Jack.

Mr. Laskin: Apart from that there is the issue Ms. Copps raised before, and that is whether there should be some residual right in this statute to go to the courts in the event that the



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commission turns you away. If there is going to be a provision for access to the courts, it seems to me it should only be after you have gone to the commission and the commission has said, "We are not going to proceed to a board of inquiry."

I am not certain. You can argue both sides of that case. Right now, I don't have any strong views about it, although it is a very important, significant issue, especially in the light of the Supreme Court of Canada's decision.

In some ways I wouldn't mind seeing the power of the board chairman to award costs. There is an argument. I hear it often as a lawyer when I go to seminars and talk to commissions. I talk to lawyers. One of the constant complaints that lawyers have, and it is a legitimate complaint, is that the whole administrative machinery of the government is being put up against respondents.

The complainant has paid-for legal counsel, he has rights of discovery, production of documents; the whole way is paved for him. Here is a poor respondent who has to go out and hire a lawyer for himself, he has to defend himself; and he may have to defend himself in more than one forum. I have some sympathy for that position of the respondent. This code, Bill 7, does a lot to alleviate it. The fact that section 31 now gives the commission the right to say, "Look, if you are going to arbitration, don't come to the commission." You cannot put that kind of burden on a respondent. That is very salutary. A lot of my management lawyer friends are very happy about that provision. But the power to award costs would be a very salutary power, I think.

Hon. Mr. Elgie: Do you think there should also be the power to award costs against a respondent?

Mr. Laskin: Yes, I think it has to work both ways. If you are going to have it, you have to have it both ways. There are lots of pros and cons about it. There are tremendous financial implications rampant in that because we are appointing a lot of boards of inquiry. I don't what the figures are but they are increasing dramatically. There are serious cost considerations. Obviously the complainant cannot pay the costs if they are awarded against the complainant, so the government pays the cost. That is a significant financial burden. I am no expert in that area but if you ask me, just as a legislator and not talking about finances, I think it is salutary. I think respondents would feel it was a fairer provision.

Hon. Mr. Elgie: Do you not think respondents would be concerned about the government amassing the costs put into cases where the tribunal found in favour of the commission?

Mr. Laskin: Perhaps. I suppose you would have to have them taxed. You would have to have taxing officers to tax them in the ordinary way. My complaints with Bill 7 are in general very minor.

Mr. Riddell: Do you have any concerns about the section holding employers and landlords responsible for their employees or their tenants who may happen to let their emotions run away with

nems? Where a landlord or employer can be held responsible if an employee happens to take a shine to someone of the opposite sex next to him or her on the assembly line and kind of lets his or her emotions run away?

Mr. Laskin: It seems to me he is like the dog used to be under the Vicious Dogs Act--he still has one free bite, as it were. But seriously, he has to have prior knowledge. Surely if he has prior knowledge and does nothing, I don't see anything the matter with that. I think that is perfectly proper. He is responsible for his work place and a landlord is responsible for his accommodation place. It seems to me that is perfectly proper.

Mr. Renwick: I just have two or three minor matters that are of concern to me. We have had some representatives of senior citizens come along and raise the question about the upper limit of 65 in the definition of age.

I had thought, and I expressed it in the committee, that that was simply a drafting error in certain sections of the bill, but there is some indication that perhaps it is not. I am not underestimating the problem in respect of employment, but looking at the harassment section in accommodation, section 2(2), it seems to say that once you are 65, you can be subject to harassment by the landlord. I am just curious about whether I might have missed something or whether it is a drafting error.

Mr. Laskin: I cannot help you as to whether or not it is a drafting error. As I read it, it was applicable to all sections. I personally have had some sympathy, but I do not know what the answer to it is.

It is a very nice question as to what happens if the Prime Minister's charter is ever brought into law. As you probably know, in the charter of rights, which is supposed to bind both federal and provincial legislation, age is not defined. There is a caveat that says that the equality section of the charter would not be brought in for three years until, I presume, they had worked out some accommodation with the provinces on it. None the less, the federal government has chosen not to define age.

Mr. Renwick: My other question--perhaps you answered it and I missed it--was a question that Ms. Copps raised with you on an action in the courts for unlawful dismissal. Offhand, in an action for unlawful dismissal, could a person plead a breach of his right to a prohibited grounds of discrimination?

Mr. Laskin: Sure. I think he would plead that he had been dismissed without cause. Let us assume that in the ordinary course he is an employee and he is on for an indefinite term, and the employer fires him because there is a new manager who does not like blacks. There is no cause, so in my judgement that would give rise to an action for wrongful dismissal.

Mr. Renwick: He would not be faced with the proposition that the Legislature has provided a code by which such rights are pursued?



Mr. Laskin: I don't believe so, Mr. Renwick, because indeed we have had those cases. They have gone to the courts and been dealt with.

Mr. Renwick: So in a sense, on the questions of unlawful dismissal, there are two avenues open?

Mr. Laskin: Grievance, if you have a collective agreement--

Mr. Renwick: Grievance under collective agreements, or a complaint under human rights legislation.

Mr. Laskin: There is a point I wanted to make to Ms. Copps, which I probably did not make very well. It certainly does not decide the threshold question whether in principle you should have recourse to the courts. But the only point I wanted to make to her was that as a practical matter, it seems to me that the areas where it would increase coverage are very limited.

If you are talking about accommodation, the landlord and tenant law will deal with that whole area and you have recourse to the courts under that. If you are talking about employment, if you do not have a collective agreement and it is a case of dismissal, you will have an action in court. So, you are really talking about limited areas where providing a cause of action would increase your access over and above the access you now have. That is not a reason, as she quite rightly said, not to have it, but it is a practical answer. There may be a good reason to have it.

4:40 p.m.

Mr. J. A. Taylor: Could I ask a supplementary on that? If you substitute "sexual orientation" for "race," as I understand dismissal and the common law remedy, there are about four areas argued as being areas of cause--insubordination, incompetence, if you are continually absent, and, I think, moral turpitude. As I recollect, they are the four basic reasons.

I haven't heard of sexual orientation as being one, but person after person has come to this committee and said, "Look, as soon as you are discovered to be a homosexual, you are automatically fired or could be automatically fired without a remedy." I am just wondering, that was never my perception of it, but that is what I have heard. I am wondering if Mr. Laskin can assist the committee in his understanding of that.

Mr. Laskin: My perception would be about the same as yours. While I am not familiar with any Canadian cases, there are a whole host of American cases on precisely that point. Many of them, as you might anticipate, come from California.

As I understand the jurisprudence, it is that dismissing an employee, and it is often a teacher, because he is a homosexual or she is lesbian, is not justifiable grounds for dismissal unless you can demonstrate that the sexual orientation somehow interferes with their job performance. If you can't relate it to job performance, it is wrongful dismissal.



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Hon. Mr. Elgie: Wasn't there one case in Ontario about three or four years?

Mr. Laskin: Yes, I am sorry, Mr. Minister, you are absolutely right. There was Damien and the Ontario Jockey Club, with which the commission had some preliminary involvement. As I understand it, that case has never yet gone before the courts but is still bogged down in preliminary proceedings.

Hon. Mr. Elgie: Wasn't there a case of a police officer, though?

Mr. Laskin: Your memory, or recollection, is better than mine.

Hon. Mr. Elgie: It seems to me I recall that case.

Mr. Renwick: But the point remains that from the point of view of obtaining employment it is very significant.

Mr. Laskin: There is no question, Mr. Renwick. It could be very significant.

Mr. Renwick: I have been, as we all have been, kicking around some easy solution to the problems raised by section 30, at least in the public perception, if not in the erudition of the legal minds of the ministry. A couple of things that went through my mind were that if we simply provided in place of subsections 3 and 4, if we simply deleted those sections and left in the usual statutory provision, which is in subsection 6; that is, that "No person shall hinder, obstruct or interfere with a person," and so on, that would be consistent with a number of other statutory provisions. I would take from your comments that would meet the practice of the commission at the present time with respect to investigations.

Mr. Laskin: In the sense that if the commission's investigator is told, "No, you can't enter," or "No, you can't have a document," and then he or she politely withdraws and tries to resolve it elsewhere, yes; I suppose you are right. But I suppose my concern would be the concern that I expressed before, that you don't get that politeness unless you have some hard backup.

That is more in the nature of a deterrent, more in the nature of telling people--and we have used this on many occasions with great effect--"Look, this is what the Legislature has said that we can do. You have an obligation to co-operate with us." If we didn't have that, clearly we would be hampered in getting in very quickly and finding out what is going on and, hopefully, conciliating.

Mr. Renwick: I recognize that problem. Do you not think that subsection 5 is of assistance? That is the power of the investigator to call upon the police officer to assist him.

Mr. Laskin: No.

Mr. Renwick: You don't think that?

Mr. Laskin: Personally, no; the last thing I would want to see. Quite frankly, it would have to be a very unusual situation before I would want to see the police called in to a human rights investigation, because we'd lose the entire perception and atmosphere and intent that we're trying to create.

Believe me, these people do not go in in a kind of accusatory fashion. They don't go in with the same mind-set as a police officer, who is there to solve a crime that he believes has been committed. These officers genuinely go in there to try to resolve the situation, and that's evident from the outset. I think that's why, in large measure, they get the kind of co-operation they do.

I think there has been only one occasion in six years where I have had a complaint made to me as commission counsel about an officer's conduct in investigating a complaint.

Mr. Renwick: In what instances would he indicate that he did have the backup power?

Mr. Laskin: An initial refusal, which may be for a number of reasons. There may be a matter of principle. You know, the ten-year confidentiality files are an example, which we never did satisfactorily resolve. I got involved in that process, and I tried to persuade this particular institute's counsel that they should divulge their files and I couldn't get an agreement. So we're going to a board of inquiry.

They just may be unco-operative at the beginning; they may be unfamiliar with the commission's processes; they may simply say, "Gee, I don't want anybody coming in and looking at my employment records," and so on. So we say, "Look, here's a code that sets out the kinds of powers we have got, and here's what our duties are."

One of the problems we have got, in a sense, is that cases of discrimination aren't the kinds of blatant cases of discrimination that you may have seen in this province 20 years ago. Cases of discrimination that we get now are, by and large, very subtle cases, very difficult to investigate. They are cases of structural discrimination within a place where, for example, women will say, "We're not given the employment opportunities that men are. We aren't given an opportunity to advance in the same way men are"; or blacks will say, "Look, over the course of the last six years the promotional opportunities in this plant have been very limited for people of minority groups."

That's very hard to investigate by going in and sort of saying, "Mr. Manager, what's the situation?" You have to look at employment records, you have to interview innumerable people, you have to go over past practices. It's time-consuming and it's difficult to detect. Those are the kinds of cases we're getting these days.

Mr. Renwick: I certainly hear what you're saying about

It. I notice that in the Highway Traffic Act, for example, they provide--leaving aside police officers entirely--that any person who is charged with carrying out a duty under the act is included in the definition of peace officer.

Would it be a possible solution here, without having to spell out these particular powers, simply to say that for the purpose of carrying out the purposes of the act any investigator has the powers of a peace officer, which are pretty significant in the sense that if there were any apprehension that evidence was going to be destroyed, for example, he could do exactly what a police officer can do--he has to stand on his own feet, on the decision he makes, but he can go in?

It seemed to me that that was one possibility. It would allay some fears, justified or not, that somehow or other these investigators have some extra police power or something. If you simply equated them with a peace officer those duties and obligations are pretty carefully defined in the eyes of the courts, in any event.

Mr. Laskin: Sure, they are. I certainly respect your view or your suggestion in the situation. I guess I can only say that my own view--and I may be completely wrong; I certainly have far less experience than you have--is that I'd be concerned about the implication of the criminal law process in this whole procedure. It seems to me that that's in a sense what you are inviting.

Mr. Renwick: I didn't want to pursue it, and I assure you I haven't got the experience that you have in this field. I'm still concerned that this provision in this bill now is perceived, and even the provision which the minister is suggesting will be perceived, to be granting some extraordinary powers. I had thought that perhaps the simplest method was to equate them with the same powers that a peace officer would have and then simply leave subsection 6 in as the general provision that is in most of the statutes that we have.

4:50 p.m.

Mr. Laskin: I know there is apprehension because I have read about it. Look at the document section, for example, as a lawyer who does only civil litigation. It seems to me to be extraordinary, because, as you know, in a civil lawsuit all you have got in section 30(3)(b) is nothing more than any party to a civil action is entitled to: production and copies of all documents that are relevant in a lawsuit. It's an ordinary right that's accorded to any party in any civil action in this province. So to read something extraordinary and sinister, for example, into section 30(3)(b) seems to me to be incredible.

Mr. Renwick: Would another alternative to that provision with respect to documents be simply to give the commission power to subpoena documents? I don't think there is a power to subpoena documents.

Hon. Mr. Elgie: --Mr. Laskin thought that might then



bring the commission within the Statutory Powers Procedure Act and destroy the whole function and purpose of the commission. Certainly the board of inquiry has the power to subpoena, which is the route that I had suggested we might take.

Mr. Renwick: That's a long way down the road.

Mr. Laskin: That would concern me. The minister's concern would concern me, because quite frankly I think there are some sections in here right now in which one could make a pretty good argument that the commission's actions are judicially reviewable, which may or may not be intended. And I think that--

Mr. Renwick: That was what was worrying me in my earlier questions to you.

Mr. Laskin: To encourage that, to place you squarely in the Statutory Powers Procedure Act, would make it virtually impossible for the commission to operate effectively on a day-to-day basis. And indeed, I don't think it's really what was intended.

Mr. Renwick: I don't have any other questions.

Mr. Chairman: Are there any other questions?

Hon. Mr. Elgie: I thank John for having taken the time.

Mr. Laskin: You want your (inaudible) answered?

Mr. Chairman: Thanks very much.

Mr. Laskin: You are more than welcome. Thank you for having me.

Hon. Mr. Elgie: I think it has been a very important contribution to dispel some myths that have been abroad. Thank you for taking the time to appear.

Mr. Laskin: You are welcome. Thank you for inviting me.

Mr. Chairman: Thank you very much.

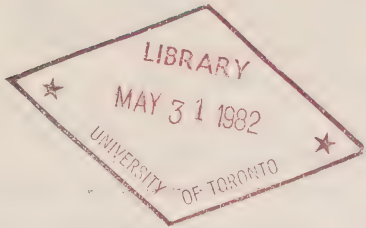
We will shortly adjourn until tomorrow morning at 10 o'clock. I understand we have seven deputations tomorrow. We may have to see how it goes. It would be my hope that we sit and hear them all and then break, that we not break for lunch and then come back.

The committee adjourned at 16:53 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, OCTOBER 7, 1981.

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Research Officer: Madisso, M.

From the Ministry of Labour:

✓ Brandt, A. S., Parliamentary Assistant to the Minister  
✓ Brown, G. A., Executive Director, Ontario Human Rights Commission

Witnesses:

✓ Babineau, G., Private Citizen  
✓ Campbell, K., Renaissance Ontario  
✓ Fitzpatrick, R., Private Citizen  
✓ Mawani, S., Private Citizen  
✓ Shaughnessy, D., Private Citizen

From the Chinese Canadian National Council for Equality (Joint  
Brief with Council of Chinese Canadians in Ontario

✓ Eng, S., National Executive Member  
✓ Lee, R., Executive Director

/ From Franco-Ontarian Affairs

Lalonde, G., Executive Director  
Morin, A., President



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, October 7, 1981

The committee met at 10:13 a.m. in room No. 151.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario:

Mr. Chairman: Okay, ladies and gentlemen, we'd like to start. I believe we have seven deputations today. We will see how the time goes. It was my intention to hear them all before we break.

There is a package of materials. The ones with the elastic around them are from Legislative Services. These are the Renwick papers I think we mentioned last week. This is some of the material Merike Madisso had prepared for Jim and he asked that it be made available for everybody.

First this morning is Robert Fitzpatrick.

Mr. Fitzpatrick: Before I start, I would like to say I want to thank you for this extra day you have put on. I have waited a long time to say this and I haven't had many opportunities to get around to saying it. Unfortunately something happened and I thought my last opportunity was going to be taken away from my grasp. You have given me another opportunity, so I appreciate it. If we can get right down to it, I would like to start reading what I have written to you, after which perhaps you could ask me some questions if there is anything you desire to ask.

I am just a layman in this presentation. I represent no particular group and yet I am the voice for a group that has neither the ability nor the precociousness to organize. I am here solely to represent the children of our society. This matter involves me directly on behalf of two of these children, and indirectly on behalf of many others.

I do not know the proper use of protocol in addressing myself as a voice for our children, and I will not embarrass myself or this committee by attempting to use such feigned knowledge. I request that this committee not close their minds and judge the merit of this report on such ignorance or semantic errors.

Further, I have a limited public school education. Thus, in some instances, this will probably result in my presentation being made in a left-handed way. But to as great an extent as my intelligence will allow, I will attempt to maintain any redundancies to a minimum.

In the light of the above-mentioned, if this committee will

grant me patience and understanding I shall present this entire report based only on facts and first-hand knowledge that is all relevant to the subject matter of Bill 7. After reading the contents of this report I will, further, make myself available to answer all questions in the same prescribed manner if it is the desire of this committee to elicit more information than I have provided in this report.

Having said all this I would now like to address myself to the issues at hand. For this committee to have an absolute clearness of the importance and imperative need for Bill 7 to be made into law as soon as is reasonably possible and how it relates directly to the case I present I must show factually what has gone before to this present time, and what will come after this time if Bill 7 is left to stagnate and die in the lost shuffle at the bottom of some long-forgotten cabinet file.

This bill must never die of apathy. It is our poor and our children who suffer the greatest from the lack of a human right to act that in many instances lacks the power to enact human rights. These people have absolutely no protection from bureaucratic political decisions that are arbitrarily made for bureaucrats only. I am now fully prepared to prove the truth of this last statement, as well as proving that until Bill 7 comes into legal reality this trend, as a fact, will continue until hell freezes over.

My particular case deals with the Family Benefits Act. I am a single male parent with two dependent children whose ages are eight and 10. I am destitute and a resident of Ontario. I am also, an employable person with fair health.

Though I have raised my children pretty well as a single parent since their infancy, I have been and am still considered to be ineligible to receive family benefits, which are supposedly provided to a person who needs long-term financial assistance. I am a single female parent in the exact circumstances as myself can and does receive family benefits even though she is an employable person and is raising school-age dependent children.

The only onus placed on this female single parent is that of the basic requirements for eligibility. She only has to prove that she is not living in a married or common-law situation, that she is destitute, and that she is a resident of Ontario raising dependent children. Nothing more is required. A single male parent must prove much more, which in many circumstances is impossible to do.

Let it suffice for me to say at this point that I have absolutely no intentions at any time of proving anything more than what my female counterpart is required to prove for eligibility to receive family benefits, whether or not I have other and different avenues I could prove or use to qualify for this benefit. Because of this adamant demand for equality and citizen recognition, I have had events occur that will astound this committee and show every reason why Bill 7 must become law.

In 1973, I left my estranged wife and took the two children



of our said marriage to Winnipeg, Manitoba. In Winnipeg, I divorced my wife and was awarded full and sole custody of our two infant children. It should be noted that both these court decisions were made by a female judge, who with full knowledge of the circumstances deemed that I, as a male, was a fully competent and reliable parent with whom the children would have the best opportunity to realize a proper upbringing. My wife was deemed to be incompetent and voided as a parent in this action.

Since I have been doing this job now for the past eight years, it can be seen that this judge made a factually correct decision, a decision that no person or act has a right to rescind without just cause. No such cause has ever been forwarded.

10:20 a.m.

In 1974, I applied for provincial welfare in Winnipeg, which is the equivalent and parallel structure of receiving family benefits in Ontario. At this time, and up until as recently as 1980, I was totally unaware of the proper procedure to use in procuring my civil rights. However, I was still accepted for provincial welfare on a variance to the act which meant nothing to me at the time, in 1974, as I did not understand the concept of a variance. Three months later this variance was rescinded. It was appealed by my solicitor, and the case was lost in court because the judge hearing the matter said that the general wording of the human rights act had no precedence over the specific wording contained in the provincial welfare act. Only single female parents were specifically included as being eligible to receive provincial welfare assistance.

After this court decision was rendered, the city of Winnipeg was willing to recognize my valid need in the home and granted me general welfare assistance. Thus, with my ignorance of law and no practical guideline on how to pursue my right to equality in this matter, I accepted municipal welfare assistance and did not pursue the issue of provincial welfare assistance. This was a serious error and later almost cost me the opportunity of raising my two children.

When my children both came of school age, the attitude of the city welfare administration in Winnipeg began to change in relation to my welfare eligibility. Now this department began to make threats of welfare cancellation unless I actively sought employment. On one hand, the same department openly admitted to me at this time that I was being discriminated against by the specific wording of the provincial welfare act. They even went so far as to have the city council write a letter of recommendation to the provincial government for a change in this act to get single male parents equal eligibility to receive provincial welfare assistance. On the other hand, the city welfare department was still perfectly willing to enact its own brand of discrimination while making a hypocrisy, as well as rescinding the meritable validity of their written recommendation, by still attempting to make me seek employment outside the home, something overlooked if I were to receive provincial welfare assistance.



It must be seen that both myself and the city of Winnipeg welfare department were placed in a catch-22 position because of discrimination contained within the provincial welfare act. The city welfare department could only provide welfare assistance on a short-term basis to employable people who were seeking self-sufficiency, even though for at least four years they had provided welfare assistance to myself. I could not see how this same department could shout discrimination, advocate a change in the provincial welfare act, and then repudiate themselves by demanding that I now seek work and bring in a surrogate parent or babysitter to care for my children.

For a year and a half this war was waged on three fronts by myself, city welfare and the provincial government. Finally, in April 1979, this issue came to a head. I was not receiving city welfare assistance, and this department refused to reinstate me for assistance. The provincial welfare government refused to alter the wording in their act and would not under any circumstances make an exception and allow me to get provincial welfare assistance.

The rent went unpaid. We, my children and I, began running out of food, but still I adamantly refused to give up my rights to equality when no one had shown me that I was not deserving of such rights. On occasion, our neighbours would give us groceries, and our landlord let the rent slide for half a month, then for another full month. Finally, he could carry me no longer and he asked me to leave, but I could not as I had no place to live. The landlord got a court order to have me evicted. The judge hearing the matter gave me until the end of June to pay all owing back rent or be evicted. I had no money and I could not get either city or provincial welfare assistance.

Within a week of the court decision on the eviction, I had a visit from a city of Winnipeg children's aid worker. During this visit, she stated she had no reason to doubt my excellence as a parent, but if at the end of June the children and I were evicted, had no place to live and no money to exist on, the children's aid society would apprehend my children.

The same worker said that it was obvious I was being discriminated against in the provincial welfare act, but she could do nothing about this. I said: "Why don't you take the provincial government to task for causing this situation to come into effect instead of acting as a police force for their discriminatory act in taking my children from me? I am the victim in this instance, and now you are telling me that you are perfectly willing to victimize me even further instead of taking the people to task who are committing these wrongs." The worker said she sympathized with me but could do nothing but take my children.

I then telephoned the executive director for children's aid, a Mrs. Betty Swartz, and cited what was occurring and the circumstances involved. She said she could not and would not interfere with any of her workers and, since my children were of school age, I should perhaps get a job.

A few days later on, June 9, 1979, Mrs. Swartz wrote an article in the Winnipeg Free Press condemning parents for working and abandoning their children. She said such children are suffering from the "me generation" where they are neglected by the parents' selfish monetary priorities over their children. Mrs. Swartz stated that our society is in an epidemic state of youth suicides, drug abuse, alcohol abuse, and emotional problems because of this neglect.

I recontacted Mrs. Swartz and told her I had read this article and that I was one parent who did not want to abandon his children for the sake of earning a buck. Once again I asked her to intervene on my behalf; once again Mrs. Swartz refused.

I waited and waited for a change of attitude or situation to occur from any department. Nothing happened. Finally, on the day of our eviction, I left Winnipeg and went to my parents' house in Niagara Falls. Effectively and efficiently, I had been made totally poverty stricken, been starved, been kicked out of my home, been threatened with my children being apprehended and forced out of the province of Manitoba, just because I dared to have the audacity to demand to be treated fairly and equally in law.

I dared to say my most important responsibility was to remain at home and raise the children I brought into this world, and not have some surrogate parent, who would not provide in-depth love or guidance but just be doing a job until something better came along, to usurp my role as a parent. Then another surrogate parent would take over and provide her own brand of direction, and so on. What sort of stability and guidance is this for children? How do they feel love and warmth if every adult abandons them after a short period of time and their own father will not love them enough to stay home and care for them?

I arrived in Niagara Falls and applied for city welfare. I immediately was asked why I left Winnipeg. After reciting my story, I was at first refused welfare assistance. Then I was given such assistance. Within three months' time the Niagara Falls regional welfare administrator found a flimsy and illegal excuse for cancelling my welfare assistance, and that I can prove.

I remained terminated from welfare assistance for four months. In February 1980 I was reinstated on welfare assistance. Within three months I was again cancelled from welfare assistance on another flimsy and illegal excuse, which again I can prove, by the same welfare administrator.

In the meantime I had applied for family benefits. I was turned down. The welfare appeal board upheld this decision. I appealed to the Supreme Court of Ontario but had my appeal dismissed on the basis of the specific wording of the Family Benefits Act being binding in law, and the courts had no jurisdiction to change any laws but only uphold them as they are written. I have not received one cent in welfare assistance from any department since the end of April 1980.



At this point I would like to go off the track here for a second. I am now getting welfare assistance because I had a major operation recently and the circumstances have changed. I will be getting this assistance for six months. After that I will probably be deemed as unemployable again and I will be in the exact situation as I was before. Therefore, again I will not be getting welfare assistance--at least not general welfare assistance. Unless this act does something to change the Family Benefits Act, I certainly won't be getting any benefit. I just thought I would clarify that point.

This is over 19 months ago. This is totally disgraceful when a female in my exact position would long ago have had her application for family benefits accepted. For the last 19 months I have had to survive on \$47 per month because I demand that my children have the right to be raised by the only natural parent available--myself.

Two months after I moved to Niagara Falls from Winnipeg, my father passed away. My mother receives a small insurance policy and a widow's allowance as she is almost 60 years of age. This is how the children and I have been surviving. My mother is rapidly depleting her insurance policy and paying out far more than her widow's allowance provides for our upkeep. She knows I have a long uphill battle for rights and equality because the salient fact is that a poor man fighting a poor man's law gets totally ignored and abused all down the line from these very people we elect to office to serve us.

A classic example is shown when I went--and I'm sorry you don't like that but they are the facts--to see a Mr. Vince Kerrio, the Niagara Falls MPP, and requested him to look into the discrimination that is inherent in the Family Benefits Act. They asked me to leave his office and never come back. Then he published an article in the Niagara Falls newspaper saying that he would not help me because he could not get "warmed up to me." If I were a woman, he would help me because women need this help, but I am an employable person and should get a job. So said Mr. Kerrio in Niagara Falls.

10:30 a.m.

What hope do poor people have in retaining their civil rights if our politicians will come right out publicly and say they are perfectly right to discriminate against a person based solely on that person's sex? What would happen if I had been made totally destitute or was not living at my mother's place, but on my own, as I was in Winnipeg? It is quite clear I would have been threatened with child apprehension once again, and once again I would have been forced to leave the province or give up my children. This trend will always continue till hell freezes over because our politicians cannot get warmed up to a man being a single parent.

Even though a female judge, with full knowledge of all relevant circumstances, awarded me full custody of my children as a single male parent, this act without factual knowledge t



dispute the validity of this decision, can with total impunity usurp the rendered decision of this honourable judge and damn me as not being recognized as a parent, single or otherwise, and our politicians do not only uphold such a repudiation of our legal system, but they will institute their own brand of blatant discrimination. If I, as an adult, have absolutely no voice or recognition to civil rights and equality, then what do my children have when they have no voice or understanding to speak with?

It is a fact known clear across Canada, in every province, that our economy is soaring, on a continued increase far beyond our birth rate; that any every one of our children's aid centres is overcrowded, that every one of our mental hospitals is overcrowded; that every one of our training schools, reformatories and penitentiaries is overcrowded. We do not have enough psychiatrists, psychologists, guards, policemen, judges, probation officers and facilities to handle the ever-increasing amount of troubled people in our society.

It has been reported that we are faced with a society of epidemic suicides and alcohol abuse and drug abuse. But what is the one most prevalent and obvious underlying cause of all of this? All professional social workers agree that the most basic cause is child abuse and neglect. Yet here I stand, attempting to be fully responsible in our society and not abuse or neglect my children, by staying home to raise them and guard them and love them. No surrogate parent--and this been proved and continues to be proved every day in every city of Canada--could ever provide the same quality of need and responsibility as a loving parent can provide in their natural feelings and expression.

Yet our politicians, whom we entrust with the oath of office to serve us--the people--the government of Ontario, totally abuse this trust and act in such a manner that will only enhance and propagate the abuse and neglect of our precious children. What hope for the future do they have if in the very first instance they are denied the very right to be of existence and value to our society, simply because they are raised by a person who is a man instead of a woman?

These children had no say as to what sex gender would raise them, but a court judge in her wisdom did, and did say specifically what sex of parent would do this. What say did I have as to what sex I would be born into? But this government can say, in effect, "Get a sex change operation, or go to hell."

Committee members, we have a tool at our disposal to use or abuse. We have Bill 7. The Ontario Human Rights Code, as it now stands, has absolutely no voice or credence in any government laws, but by implementing Bill 7, the human rights act will always have precedence over these civil statutes.

Section 1 of part I of Bill 7 will provide alleviation from this biased act being instituted by the provision that every person has a right to services without discrimination. The Family Benefits Act is a service provided by the Ontario government. As well, section 7 of this bill provides that every person has a right to claim and enforce his rights under the human rights act.

Section 8 provides that no person shall infringe directly or indirectly on anything included in part I of this bill. As well, in part II of Bill 7 it is stated that "equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination. Since I have been awarded full custody of my children, it can be seen that being a single parent is not a prohibited ground of discrimination exclusively reserved as a right for a woman only.

As well, under subsection (f) of section 9, it states that "family" means persons in a parent and child relationship. This part does not specifically state only female parents, but includes parents of both sexes. When a marriage dissolves, the sex that is awarded custody of the dependent children in the divorce action is considered to be the person designated as being "family." Again, this does not provide for only one particular sex assuming such a role when the marriage fails.

In looking at the word "services" in subsection (j), I note it states: "'Services' does not include a levy, fee or tax imposed or authorized by law." Thus, relying on specific wording, as the Family Benefits Act is so reliant, then it is obvious that the only law affected from exemption for services is that of an imposed tax which is authorized by law. Therefore, the services of family benefits must be seen to fall within specific provisions as laid out in Bill 7, and any breach of the Ontario Human Rights Code under the provisions of this bill would be in contravention of law under section 8 and section 10(a) and (b) of Bill 7 in the proposed revised form of the Ontario Human Rights Code.

By challenging the legal validity of the Family Benefits Act under this provision, it can only be seen that constitutionally as well as legally the Family Benefits Act would have to be revised in its discriminating sections of the act. Then, finally, all of our children will have a right to equal treatment in law on a civil level right from infancy. This would be a first major step to giving our precious people fair voice and recognition: instead of making a mockery of instituting all sorts of child laws for the protection of our children, to have only one act and at one fell swoop take away all such protection by refusing to admit the existence of children raised by a single parent who is too much of a fool to abandon full parenthood and work outside the home, or is too much of an ass not to get a sex-change operation.

My final comment in regard to the actual wording of Bill 7 is in regard to section 8 in part I of this bill. Though this section provides that no person should infringe the rights laid out in this section, I think it would be wise to include a section with a little more binding power by going further and stating something along the line of, "No agency, institution, or collective body of persons, acting for or on behalf of an agency, institution or collective organization, shall infringe or do anything that results directly or indirectly in the infringement of a right under this part."

This would effectively eliminate the passing of the buck down the line, and in a continuous circle, so that no person would



assume responsibility in any sort of a group or organization for infringing on a person's rights. Then the group or organization as a collective body could be made to stand responsible for their action. Thus, a lot of red tape and legal circumvention, as well as court proceedings, could be eliminated in certain circumstances of rights infringement.

Whether or not this committee is prepared to include this amendment to Bill 7 should not prevent the swift and much-needed passing of this bill into law at the earliest possible time. Justice delayed is justice denied. The longer this bill remains an unresolved issue, the longer justice will be denied. If we can forestall implementing justice with political rhetoric until finally the bill of rights dies the lingering death of delays and forgotten worth, then one day we may just find that the democracy we always assumed never was.

What do we say when we have only ourselves to look at and know that we alone were responsible for screwing ourselves in the ear? Apathy does not replace responsibility, and an allowance of human rights to be usurped is condescending to a dictatorship that we, all of us, permitted to happen, when we knew full well that this was taking place. Is this how little our children are worth, that we, their guardians, can take the future of our children away because they are innocent and uncomprehending of what we are doing to them. I thank you all for listening to me. If there are any questions anyone would like to ask, I will now do my best to give a factual response.

10:40 a.m.

Mr. Riddell: I guess it is safe to say that you did not vote Liberal in the last election.

Mr. Fitzpatrick: That is very safe to say, yes.

Mr. Riddell: What I get out of your comments is that the place of a mother in a married relationship is at home looking after her children, and if it is a case of a separation, the place of the parent who has the custody of those children is at home. That is putting it very simply but I suppose that is what you are saying.

Mr. Fitzpatrick: Half of what you say is correct. I do not believe that the place of the mother in a marriage situation is at home. I believe that if the father is the one who can do a better job raising children, and both parents agree that it is going to be the father who remains at home and the mother goes out to work, fine. It does not make any difference.

All that makes the difference is who is going to be the best parent to raise the children. If the marriage dissolves, then that is all the judge should take into consideration. It should not be taken into consideration that, "Well, I know a female can get provincial welfare and I know the children will always have financial income of some sort because the female can always provide some sort of financial aid. I know this man does not want



to go out to work. I know he wants to stay home and raise his children, but he cannot get provincial welfare. Therefore, I plan to give the children to the mother because I have to make sure that these children are always going to be protected economically."

This may never be admitted by any judge openly, but certainly it is in the back of their minds. As family judges they must know that these circumstances exist in the Family Benefits Act for certainly there has been publication of this. There have been things like this brought into courts many times. I have tried on many occasions and I am still trying on many occasions to bring these things forward. Our courts know and our politicians know. All I am saying is that our children have no voice and the parent who is the best to raise them should be the one to raise them, whether the marriage is dissolved or not dissolved.

Mr. Riddell: Let me reword my question then. In your estimation the place of one of the parents, the one who is best able to look after those children and give them the attention they need and what have you for the sake of the child, is at home.

Mr. Fitzpatrick: That is my personal belief.

Mr. Riddell: If we carry that to the extreme, then perhaps we should be passing legislation insisting that one of the parents remains at home in order to raise those children.

Mr. Fitzpatrick: I think that would be a very foolish mistake because it has been shown that in certain instances neither parent is really very good. They may be too emotional; they cannot take the frustrations of remaining at home, a claustrophobic kind of thing or whatever. If they cannot handle that kind of responsibility then certainly, even though a surrogate parent is not as good an alternative, that would be a better alternative than a parent abusing that child, and look at our society full of abused children.

We cannot say that all of these children became abused because surrogate parents were raising them or because they were abandoned or unloved. Certainly natural parents do abuse their own children. Whether it is a circumstance of poverty that brings it on or a circumstance of claustrophobia or whatever it is, if that parent cannot do a competent job and knows inside themselves that they cannot do a competent job, then certainly the children deserve the next best alternative.

Mr. Riddell: But most parents do not abuse their children. Sure, there are cases where they do, but most parents, I would say, do not abuse their children. But they may feel that in order to give the children what they feel the children require until they reach the stage where they are on their own, maybe both parents have to work. There is a lot of that going on right now, and I think that with babysitters and day care centres and what have you, these children are being raised quite adequately.

Mr. Fitzpatrick: You would say that? Then can you explain to me why our crime rate continues to rise, why our jails are always overcrowded, why our children's aid are always

overcrowded, why our mental hospitals are always overcrowded? It is in every city and every province and it is not decreasing, it is not holding steady and it is always increasing. And there can be no excuse that our children are being treated fairly, being treated properly, being treated in a loving manner, in a generous manner, in a proper manner.

All psychiatrists, psychologists, other social workers, all say that the most basic fact is abuse and neglect. That contradicts what you are saying right there. These people are experts. You and I are not experts. We may be parents, but we are not psychiatrists or psychologists or social workers.

Mr. Riddell: When we talk about experts I would like to give you my definition of an expert. An X in algebra is an unknown quantity. A spurt is a drip under pressure. I would think these crime rates and what not are more an indication of tough economic times, high unemployment, all the rest of it, and not so much the lack of parental care for the children.

Mr. Fitzpatrick: We had a depression and our crime rate was in no way--

Mr. Chairman: Let us get back to the topic.

Mr. Riddell: I just cannot fathom that society should be burdened with the raising of children because the parent does not want to work. I do not know whether indeed the Family Benefits Act states that if a woman is left to raise her children she can stay at home and have society do it for her--in other words, provide her the money--or whether that woman is required to work.

I have all kinds of girls coming in to my office in the same situation, but I do not think the government simply says to them, "Look, you stay home, raise your family, and we will provide you with the money." I am sure they require that woman to go out and seek employment, as I think she should and as I think maybe you should. I just cannot fathom that society should be burdened with the raising of somebody else's children because that parent does not want to go out and work.

Mr. Fitzpatrick: Have you ever taken a look at the rate of costs for a day-care centre or for a homemaker to come in, for the government to provide this? Most people who are on welfare of any sort, whether it is provincial or whether it is city, are people who have a limited amount of education, who can only get the basic jobs in most cases. You are looking at these kinds of people. They are going out there; they cannot afford to pay for a homemaker or a day care centre or for other places to take care of their children for them while they go to work.

Without rehashing all the economics involved, they would get more on welfare than they would get by going to work. Therefore, it is not feasible. Now the government has to step in and take over. The government ends up paying more for homemakers. A person on welfare does not even get the minimum wage at any time. Far below that line, they are the most poverty-stricken people in this country. Yet you cannot ask a homemaker or a day care centre to



take care of these children at the welfare rate you are giving the person to stay home and raise their own children. They refuse to do it. Why should they do it? They have gone to university or they have a full high school education or something. They have gone out and done this and done that; they are qualified people and they want qualified wages.

You are going to spend a lot more money in the long run paying for qualified people than paying for a natural parent who is perfectly content to do this job and love their children. Why should the natural parent not do what they are capable of doing? My wife and I have split up and there is only one person left at home to raise the children now. Why should it have to be that I have to go out and get a job and abandon my children? I brought them into this world. Why the hell should some surrogate parent have to come in to take care of my children, or some day care centre have to take care of my children? I am perfectly capable of doing that job myself. That is my responsibility. I brought them into this world.

We do not live in a third world country. If we lived in a third world country where there was not these kind of resources, I could understand it. There would be no choice, we would all be poverty-stricken, we would all be in this position. We are not. Our children have got a chance, and what we do to our children today is what they are going to give us back tomorrow. If you go to any penitentiary, reformatory, children's aid society or mental hospital, you will see what has been given back, because it increases, not decreases.

Mr. Riddell: If the government went along with your suggestions, I simply do not know where they would get the money to pay for those parents who want to stay at home and raise a family rather than work. I am going to tell you there will be all kinds of them--

Mr. Fitzpatrick: Good.

Mr. Riddell: --who will say, "If I can get money from the government, there is nothing I would like better to do than to stay at home and be able to play with my kids and know that I am getting--"

Mr. J. A. Taylor: Yes, but they are at school.

10:50 a.m.

Mr. Chairman: I ask that we go on, because really what we are talking about is the Family Benefits Act, and I think we are here today to make sure it is applied fairly between men and women, and that is the point.

Mr. J. A. Taylor: You are right, Mr. Chairman.

Mr. Riddell: I am just properly putting up the argument that my colleague probably should have made in his office.

Mr. Kennedy: Maybe he did.



Mr. Riddell: There is no excuse for kicking anybody out of one's office, but I just have to let this gentleman know that there is another side to his argument.

Mr. Fitzpatrick: I understand both sides. That is it. I have been playing this now for over six years. I have got to know both sides after this length of time or I am pretty damned stupid.

Mr. Sheppard: Mr. Chairman, I have a few questions. If he is living with his mother and his children are in school, why could he not have a part-time job? I do not think that is discrimination.

Regarding your opening remarks--I presume you have very little money--I would like to know who prepared this report for you and where you got the money to prepare this report?

Mr. Fitzpatrick: First of all, this preliminary report was prepared by me. I went into the St. Michael's Hospital for a coronary bypass operation, and I had been in touch with Parkdale Community Legal Services here in Toronto. We had a joint venture, and that is something else I do not want to get into, because it would usurp what is happening there; it is a legal matter.

Out of the goodness of their hearts, they typed this up and photocopied it for me to pass on to your committee. It did not cost me a cent. As a matter of fact, a person came from Toronto to Niagara Falls to pick up my brief so that she could do it. I had really given this brief to this committee here in a written form, and the secretary for the committee here had to photocopy it for me, but being typed it is much easier to read than being handwritten.

You asked me also about why I could not get a part-time job, I believe.

Mr. Sheppard: Yes, because I understand you are living with your mother at the present time.

Mr. Chairman: In fairness, Mr. Sheppard, I do not think that is the issue here. I do not think we want to get into a debate on whether he should have a part-time job. The debate is whether he should be treated differently from a woman, and that is what he is bringing to us. Mr. Riddell has been through that line of questioning. Unless it pertains to the presentation and what really is relevant with Bill 7, I would just as soon we stuck to that.

Mr. J. A. Taylor: Mr. Chairman, on this point, has representation been made by the Ministry of Community and Social Services in regard to this issue, maybe in the past? I know it is an issue that has been around for many years, and I think there was some concern that there could be abuse of the system if there were families consciously separating, each parent taking a child and then qualifying doubly for public assistance. I was just wondering if, as a committee, there was any expression by the ministry in terms of the impact of this legislation on the current legislation under which Community and Social Services operates?

Mr. Chairman: Not that I am aware of, unless there has been some directive to the ministry that the minister is aware of.

Mr. J. A. Taylor: I can see where there could be an impact if Mr. Fitzpatrick's interpretation of Bill 7 is correct. It could impact on the current policy and legislation or regulation.

Mr. Fitzpatrick: I agree with you. Any system in any guise can be abused or misappropriated. There are always going to be people who are going to take advantage. There are people who are in office close to the Conservatives taking advantage of the Re-Mor persons. (inaudible)

We could go on and on into all different sectors and all different walks of life. Certainly you cannot perpetuate discrimination and say that we are afraid that it is going to be abused if we put it in. We can say then you have to have absolute dictatorial authoritarian rule because no matter what we do, if we change it, it is going to be abused or could be abused.

You have got to take your chances. That's what life is about. We're either going to work toward something progressive and worth while or we're not going to do it. If we're not going to do it, then we're going to abuse the people who are supposedly the government of this country.

Mr. Riddell: Mr. Chairman, Jim might have raised a good point. And, according to my colleague Sheila, I am of the wrong understanding in connection with the Family Benefits Act. She tells me--whether she's right or not I don't know--that a mother can stay at home and raise her children until the child becomes 16 years of age and get paid by the government, which I wasn't aware of. If that's the case, maybe the gentleman has a point. But, by God, if that's the case, and knowing what mothers can make, knowing what some women can make in the working world, then perhaps we had better take a look at the Family Benefits Act.

But I wasn't aware that a woman can collect money from the government for 16 years while she is raising children and not have to go out and get a job.

Mr. Fitzpatrick: I can cite you a number of cases that I know of personally where for years they have been collecting family benefits, or one (inaudible) when I was living up there were collecting provincial welfare. I've had a very tough time just trying to make ends meet. I can't get either civic or provincial welfare.

Mr. Riddell: Well, if that's the case, sir, you have a point. You are being discriminated against, but--

Mr. Fitzpatrick: Yes, I feel that.

Mr. Riddell: Boy, maybe we had better have a look at the Family Benefits Act.



Mr. Fitzpatrick: But I don't think we should look at the Family Benefits Act in a way that's going to take parents away from their children. Natural parents deserve to raise their children, much more so than surrogate parents at any time.

Mr. Chairman: I think, sir, that you have made your point with us and that we understand any representation you would make to us with regard to any possible changes to the Family Benefits Act as well. I think you have been very clear to us. We thank you for appearing before us this morning.

Mr. Fitzpatrick: I thank you very much for your time.

Mr. Chairman: I have a chance to use my French here. Association française des Conseils scolaires de l'Ontario. Franco-Ontarian affairs. Albert Morin is the chairman.

Mr. Van Horne: That's about a six.

Mr. Chairman: Did I get a six on that? Giselle Lalonde, executive director. Giselle will give me more than a six, I know.

Mr. Morin: Good morning, ladies and gentlemen. Before starting to speak, I would rate him very high. Before we proceed, Mr. Chairman, I'd like perhaps to rectify your agenda. I'm not the chairman of Franco-Ontarian Affairs, which is Mr. (inaudible). I am Albert Morin, president of the Association française des Conseils scolaires de l'Ontario, and Mrs. Lalonde is the director of this association.

Mr. Chairman: You can sit down if you like.

Mr. Morin: Thank you. It will be better with my bifocal glasses.

Mr. Chairman: You can stand if you prefer.

Mr. Morin: I was born and raised in Cornwall, Ontario. I'm the father of five children. Two are presently at university, one is at college and two are still in high school. Mrs. Lalonde was also born and raised in Vanier, Ontario.

Our association is made up of trustees from both the separate school board and the board of education, members of the French language advisory committee, plus directors of education, and superintendents and administrators of our high schools and separate schools.

11 a.m.

This morning while I was taking a shower I prayed to God that He would give me the ability and the charisma to make you understand the plight of us Franco-Ontarians. As a leader of a minority group, it's not easy. It's quite a task.

If I can take a minute, I have been a school trustee for the past 13 years in Cornwall and I have been working with a female trustee for some time on affirmative action. When we presented



this to the board we came up with an awful lot of opposition, and we experienced an awful lot of frequency of ideas, prejudices and the whole bit. The week following that the female trustee who was heading this committee phoned me and said, "Bert, after all those years this is the first time in my life that I have experienced the frustration that you as a Franco-Ontarian have suffered on this board. And I want to tell you very, very deeply that I do understand you now."

I would hope, in the spirit of the way this lady spoke to me, that you will not pick at this presentation for certain words or certain phrases, but look at it globally and say, "This is the plight of a minority group in Ontario." And if tomorrow, through an act of God or whatever, the roles should be reversed and you should be facing that very act as a minority group, would you be sorry that you wrote it that way?

I have a free translation in English of what I will say in French and vice versa.

L'Association française des Conseils scolaires de l'Ontario remercie l'honorable Robert Elgie, ministre du Travail et son ministère, de l'invitation lancée à tous les organismes et individus intéressés, à réagir au projet de loi 7.

Etant donné l'étendue des répercussions des amendements proposés au Code ontarien des droits de la personne, l'Association française des Conseils scolaires de l'Ontario se voit dans l'obligation de faire connaître à monsieur le ministre et aux membres de la commission, les inquiétudes bien fondées des responsables de l'éducation franco-ontarienne concernant les droits religieux catholiques acquis selon l'Acte de l'Amérique du Nord Britannique et les droits linguistiques reconnus dans la Loi sur les langues officielles du Canada.

Even if bilingualism has not, unfortunately, been officially recognized by the province of Ontario we have the right to believe that a government which has legislated on the question of establishing French schools and instructional units and spent an enormous amount of money to offer more and more service in French--therefore, a government which recognizes the French minority in certain instances--must not be allowed to ignore the same minority when it is time to express and protect its fundamental rights.

Indeed, can the Ontario Human Rights Code stray from the fundamental rights established in the Universal Declaration of Human Rights without being justifiably accused of discrimination?

The Association française des Conseils scolaires de l'Ontario, whose main objective is to ensure that every French-speaking student in Ontario has a chance to develop his potentialities to the fullest, will not suffer in silence this grave injustice found in Bill 7.

The question is, does Canada really recognize the existence of two founding nations? I believe that therein lies the problem:

to ignore a people which has pioneered the eastern part of this province, a good part of the far and middle north, which entrenched its roots in the south and, despite constant struggles, is now establishing itself more and more in the west of the province.

Does this people not deserve some attention from the commission? Can those settlers, those miners, those farmers and hard workers not be part of that group of workers deserving the respect of its culture and its fundamental rights just as much as the immigrants or the English-speaking majority are all deserving of their own?

It is not difficult to show that francophones are among those who have suffered the most from the discrimination with regard to their rights. How many French-speaking children and families were assimilated in the Sudbury area, for example, because the family providers felt it necessary to send their children to English schools in order that they be well looked upon by the management of certain mining companies? This may easily be attested to by retired francophones, who can in all truthfulness now tell the frustration that they had experienced. Given the above, one should not, therefore, be very surprised to see to what point the number of Franco-Ontarians has declined in this province. One can hardly expect anything else.

What about the public service? Let us take, for instance, the Ministry of Education, with which we are more familiar. How many francophones hold key positions in such a ministry? The French-speaking assistant deputy minister has but one assistant and one secretary under his jurisdiction. Isn't this scandalous? Please do not tell us, sir, that there is no such thing as discrimination against francophones in Ontario.

How long will such a situation be allowed to go on? How can the code as you now propose it be of any help to us so that we may improve our lot within the public service and even within our own ministry, where there is still so much to do as far as language rights are concerned?

The code you propose does not reflect this Canadian linguistic duality. It is indeed very nice to protect the minorities, but we might as well face it realistically. This code is a code made primarily by anglophones and then for all the other minorities in what is commonly known as the melting pot. The francophones are not immigrants--not that we hold anything against immigrants, God forbid! We are pleased that they can feel right at home here in Ontario.

But the government should understand that these minorities must accept the Canadian reality as it exists. This is a linguistic duality based on two founding nations. I believe your code must reflect this duality. This form of multiculturalism, which is now greatly encouraged by the Ministry of Culture and Recreation, totally disregards this founding nation, which implanted its roots here well before the arrival of English-speaking pioneers.



Please allow me to indicate to you some examples of the kinds of discrimination francophones are exposed to. French-speaking graduates must pass tests that are required by the unions written entirely in English. Our French-speaking students who are entering law or medicine in the only bilingual university in Ontario must also pass tests in English, and in one case that we know of such tests come from the United States. Most of the positions in the public service are classified as unilingual, and it's obvious that what is unilingual is not meant to be French. How many times must the negotiations of a French-speaking organization be conducted in English because the fact-finders, the arbitrators or the mediators do not understand French? How can one even believe that the code as it is written can protect Franco-Ontarians when they are not even mentioned in this bill? Who are we in the eyes of your government? Are we a true entity?

With this bill the provincial government sets itself up as the protector of minorities, but it does not accept the premise of the two official languages or the reality of the two founding nations of this country and of this province. We have fought alongside you, but I believe this is perhaps quickly forgotten here. What can we say about the grave injustice in the distribution of corporate assessment to the separate school system, a system that is used by the majority of francophones at the elementary school level? Is this not discrimination? Our teachers, who work under this system and who have always had to accept salaries that were comparatively less than the ones of their colleagues in the public schools, have, because of this, lost considerable sums of money. Isn't this discrimination?

11:10 a.m.

In Ontario the francophones have nothing to protect them at the cultural level. Organizations such as the Commission des langues d'enseignement, the Conseil des affaires franco-ontariennes, the Conseil d'éducation franco-ontarien, and the CCLF have absolutely no power. Even reports that have been written by well-informed anglophones have constantly been rejected locally. Nobody seems to listen any more. Here are but a few examples: transportation in Hamilton, French instructional units in Michipicoten, and many such cases.

We believe, however, that we are full-fledged citizens of the country we have discovered. We are also convinced that there is a lack of justice in your bill. In effect, what has happened to the kind of social and distributive justice that ensures that every citizen within a province or a country is entitled not only to a fundamental number of privileges but of powers, as well as duties? This kind of justice does not exist in Ontario.

This bill is a very valuable document and we agree that to give it too much rigidity and precision would be extremely dangerous. However, the clause "what is reasonable and bona fide in the circumstances" is much too vague and provides too much freedom for anyone to interpret it in any way he or she chooses. Discrimination, differences, race, et cetera, are words constantly mentioned in this bill. If anyone has been discriminated against in Ontario, it is, indeed, the Franco-Ontarian people, and the organization most guilty of such discrimination is the government of Ontario itself.



In essence, the contents of the bill are good but there are still some extremely important omissions, such as a definition of the term "nationality"; the question of official languages and the linguistic rights of the francophones in Ontario; and a clause which gives the power to coerce, whenever necessary. Indeed, what does \$1,000 represent for a company or a government? What is of primary importance to us is the manner in which the code will be interpreted and the way it will be applied in the Franco-Ontarian context. It does not address itself, practically speaking, to the causes of discrimination of which we are victims. It does not respond to the legitimate aspirations of Franco-Ontarians.

How can we even think of a code which has been laboriously translated—even the front cover has a grammatical error which has been printed and published: "Le Code ontarienne des droits de la personne" and purports to protect every single Ontarian when there are still some discriminatory laws in Ontario, for instance, the Education Act of 1974.

Mr. Minister, who are we Franco-Ontarians in the eyes of this government? Are we a true recognized entity, or simply a burdensome collectivity no one knows what to do about? Do Franco-Ontarians exist or do they not? We believe that the whole matter could be settled if you include in your code a clause dealing with language rights in order to protect your French-speaking minority.

We sincerely hope, Mr. Minister and members of the commission, that the comments found in this paper will be taken into consideration so that eventually the legitimate aspirations of both linguistic groups, founders of this noble province of Ontario, will be fully satisfied.

Mr. Chairman: Thank you, Mr. Morin. Are there any questions?

Ms. Copps: Je vais parler en français d'abord, puis ensuite je vais traduire en anglais. Hier nous avons eu la présentation de M. Roy qui vient de la Commission des droits humains du Québec. Dans le code du Québec, ils ont introduit la question du langage comme un des droits qui doit être protégé par la loi. Il y avait quand même un petit problème, c'est que même si c'était inclus dans la loi, il y avait des règlements qui s'adressaient à reprocher et reprendre des droits. Alors, si nous disons, par exemple, le "langage canadien qu'on doit protéger", ce serait tout de même possible pour le gouvernement d'avoir quelques exceptions comme ce que vous désignez par "les droits bona fide" ou des choses comme ça.

What I explained was that yesterday we had a presentation from Mr. Roy who came from the Quebec Human Rights Commission. He showed us that in his code they do include language as one of the areas where there cannot be discrimination. However, at the same time, the Quebec government has certain regulations that, in fact, mitigate against that same right. Hence you have a situation such as Bill 101 where you do have one language, let's say, becoming "la langue officielle" and the other language not having that status.

My point is if we do include language as one of the basic fundamental human rights, there may still remain the possibility that the government of Ontario will choose by other "règlements" or regulations to avoid its responsibility in this area. I am asking whether you feel that can be sufficiently addressed in the code to clear up that problem?

Mrs. Lalonde: Mr. Chairman, Madame, when we came here this morning we thought we were coming to the Ontario government and not to the Quebec government. Last week we had a great meeting in Education on Bill 82. The deputy minister, when he came in because there was a "bienvenue" in French, said he thought he was in Quebec, which I think is an insult to Franco-Ontarians. We are not Quebecers and, if you want to compare us or if you want the Ontario government to do always what the Quebec government does, I think it will be very wrong.

Ms. Copps: I think you may be missing my point. I am trying to find a way to include language rights within the code.

Mrs. Lalonde: Yes.

Ms. Copps: I don't want to have them included in such a way that the government will then be able to use another means to avoid its responsibility. Apparently, according to Monsieur Roy, that is exactly what happened in Quebec. They have in their "droits fondamentaux" the inclusion of language rights. However, they have another regulation which supersedes "les droits fondamentaux" and allows the situation to exist where you have one official language. Because there is historic precedent for the inclusion of language rights, I think they have set a good precedent, but I would like to know how we can do it in such a way that the government will be bound not to make exclusions by using the bona fide argument that you have also included in your brief. I am comparing them because this is probably one of the few legislative precedents we have for the inclusion of language rights.

Mrs. Lalonde: I think if Ontario would not only encourage but endorse section 133 of the British North America Act, that would surely be the best route. Actually, we thought by at least introducing it in this code--I do not like to say it is by a back door to have our linguistic rights--at least the Ministry of Labour would be recognizing that there is discrimination in the labour department or wherever work is concerned in this province. I think it would be a very good beginning at least. I think the government has at least taken important steps with the French language services, but we have nothing legally except the French schools and we have a very difficult time in establishing them, by the way.

Ms. Copps: When l'ACFO gave their presentation they suggested that the code should specifically state "the two official languages" rather than just incorporating general language rights, which I gather is the thrust of your brief.

Mrs. Lalonde: Yes. This is why we had read a full brief. We support them, let's say, very much. But we found that, at least if it was included in this code, it would mean a step. We understand that there have to be precedents in Ontario to gain our rights and it could be one precedent.



Ms. Copps: But would you be seeking the inclusion of simply a recommendation for language or would you prefer to see a clause that clearly outlines the two official languages?

1:20 a.m.

Mr. Morin: The wisdom of the commission on that would prevail, I suppose, but if you asked us to put in a clause there that would supersede any further legislation, I don't think anybody can suggest that. A minority is always in the hands of the majority, whether we like it or not, unless it is entrenched in such a way, but I think a government is always in power to take away what it has given.

Ms. Copps: It is also supposed to be that this code will have primacy or precedence over every other code within two years. It was unusual because when we asked Mr. Roy yesterday he did not really have the details as to how the Quebec government succeeded in developing regulations that he felt were, in fact, contrary to the spirit of the legislation they had drawn up. He was not able to really get into that. As a member of the commission he was primarily involved with functioning (inaudible) and the regulations, but it was an interesting question.

J'ai travaillé à Québec pendant la période où on faisait la loi 101, et cela m'a intéressée.

Mr. Morin: Ah, bon!

Mrs. Lalonde: If the members of the commission are interested in getting all those details, I think we can do it because we are in close contact with some people there and we could really help and give you the information you need.

Mr. Morin: Mr. Chairman, I suppose I am given a question here. I guess I have to put it through the chair. I would like Mrs. Lalonde to answer if she can. What is the effect on the clarification of the (inaudible) requested by the government of (inaudible)?

Mr. Chairman: No, you can't ask a question, sir. If you want to appear before us, that's fine. If they wish to comment on it, that's fine, but you are here before the committee.

Mr. Morin: Oh, you are not from the commission?

Mrs. Lalonde: No.

Mr. Morin: I'm sorry.

Mr. Chairman: It's really not at all in order.

Ms. Copps: J'ai une autre question. Vous avez parlé comme représentants des Conseils scolaires, et vous avez dit dans votre document que les Conseils scolaires (inaudible) mais sont plutôt catholiques ou séparés, que dans la situation secondaire ils sont pour la plupart (inaudible). Est-ce que vous pensez que



c'est une politique du Conseil qui a été forcée par le gouvernement, ou est-ce que c'est un choix libre qui a été fait par les francophones?

For those of you who don't speak French I asked--

Mr. Riddell: I thought maybe I should be asking a supplementary.

Ms. Copps: In their presentation they have suggested that they also feel that the regulations regarding funding of separate schools on an elementary level discriminate against Franco-Ontarians as well as other separate schools. They have also mentioned that the majority of their students are attending public schools at the secondary level. I asked them whether the movement from the separate school at the elementary level to the public school at the secondary level has been a "politique" to take advantage of funding or whether it has been a free choice on the part of Franco-Ontarians.

Mr. J. A. Taylor: Could you speak louder when you are speaking French so that we can understand what you are saying?

Mrs. Lalonde: I'll answer in English, even though I know my English is not very good, but I will try. In 1969 or 1970, when the large units and the establishment of the French schools came, as you remember, the only secondary French schools we had were private schools at the time. Those schools could not maintain their classes because of a lack of funds, so actually there was no way out. The only way we could go was to the public system because the government refused the extension from kindergarten to grade 13, so we went to the public schools. But I remember at the time many people had to convince the francophones that our religious rights would come after. Once we are organized in the French schools and almost everybody is Catholic, it's easy to organize it.

After a certain time we were, and still are, very frustrated on this because we had to accept the public schools, which are doing tremendous work and are doing the best possible, but are not answering to the aspirations of Franco-Ontarians who are in the great majority both Catholic and francophone. We have to accept that because of the financial aspect. Because we have a resolution coming out of our annual conference every year, we hope one day the government will the extension from kindergarten to grade 13.

Mr. Morin: If I may add, Mr. Chairman, the British North America Act gives us this right. Somehow the provinces will give you grades nine and 10 in the separate school system, but we do not get enough funding to realistically put it together. So it is a form of discrimination; if you don't get the bucks, you can't put it on.

Ms. Copps: The reason I asked that question, and it diverts a little bit from the human rights issue, is that there has been some rumbling and rumour that government may choose to extend separate school grants to grade 13. Since I have a French elementary school, and I also had a French high school, in my riding, obviously I am very concerned whether they would be able to make the changeover.

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Mrs. Lalonde: Let us say there are very few francophones who wouldn't accept the idea, but I would hope that in the legislation there will be a way of giving them the francophone instruction they want without giving them the religious aspect.

Mr. Morin: An added problem is if some Catholic school boards should decide to extend nine and 10, they could divide the Franco-Ontarians, who are already in the minority. Some would stay in high school in the public segment and we would be divided. Perhaps we would have too small--It is just not workable.

Mr. Van Horne: Excuse me, you said "extend nine and 10." You mean to go nine to 13, don't you?

Mr. Morin: No.

Mrs. Lalonde: We can go to 10.

Mr. Morin: We can now have grades nine and 10.

Mr. Van Horne: I realize that, but you said "extend nine and 10." Do you mean you want it to go the other three, 11, 12 and 13?

Mr. Morin: Yes.

Mr. Riddell: If we include language rights in this bill, then the government would have great difficulty in continuing to discriminate against separate schools and their 11, 12 and 13. Do you not agree?

Mrs. Lalonde: We have heard the rumours about the extension and we do hope they are true.

Mr. Chairman: Mrs. Lalonde, Mr. Morin, thank you very much.

Mrs. Lalonde: Merci beaucoup.

Mr. Chairman: We now have Mr. Don Shaughnessy. I believe everybody has a copy of Mr. Shaughnessy's brief.

Mr. Shaughnessy: Mr. Chairman, I am Don Shaughnessy. I am a chartered accountant. A week or so ago Howard suggested to me that he would like to see some cards and letters coming in to the government explaining how the people felt about some of these things, and I was foolish enough to say I would rather come and tell them eyeball to eyeball what I thought of it. He called my bluff, I guess, because here I am.

In general I don't want to really debate the morality, if you like, of discrimination. I think it is something everyone has to live with themselves. I guess that is the thing I find in listening a little bit yesterday and this morning to the presentations that are made here. I used to think discriminating was a compliment, that someone who was discriminating was able to choose what they felt was best for them and perhaps what was felt best for everyone.



11:30 a.m.

The material that I sent Howard was hammered together rather quickly, so you may find a few typing errors in it but, in any case, I want to represent the position of people who are in business. My clients are primarily small businesses. They do not have their internal bureaucracies, legal departments or whatever to deal with governments in a meaningful way. I think they have a number of concerns. I talked to a few of them and tried to bring these concerns into this brief. The thing that concerns me most is the question of the morality of giving a right to someone and having to take it from someone else in order to do so.

As I go through the act, I look at sections 2(2), 4(2) and 6 and say that is only logical. Anybody that allows harassment of his own employees within his place of business is paying a rather large cost in training new people, in having people leave and so on. If anything, the bill will probably make them better businessmen because they are being stupid right now.

With section 5, from a professional standpoint I can see some problems, particularly against the Institute of Chartered Accounts of Ontario in that we do discriminate, but discriminating in a sense of good choice, against people becoming members of the institute from other countries. Quite obviously in the financial world, which is where we deal, the standards and educational background of various public accountants in other countries are not necessarily comparable.

The concern I have is that sooner or later, if it becomes a serious problem of having a Panamanian public accountant file suit, or whatever one does, against the institute, the institute will wear down and say, "What the heck, we will deal with this as best we can, given the reality of where we exist." I do not think anyone, including the practitioner, benefits from that. He will obviously be placed in a position where he cannot deal effectively with the marketplace as it presents itself to him.

I have already mentioned that I felt that the government typically--I do not mean that disparagingly--takes what is not theirs and gives it to somebody who has not earned it. I do not think anybody has the right to be hired. I also do not think that if I create a job that I have less of a proprietary interest in that job than I do in any other asset that I might have. I think if I want to be effective in business, I have to be allowed to deal with my business the way I think it should be run, and if I am not right, I am going to fail.

The letter to Howard, who is a client of mine, may be a little more personal than it should have been for this purpose. But if I am to hire a woman--just in terms of background, about half of our staff now are women--and if I assign that woman to Howard's account or to whoever else might be in the business that we deal with, they may choose not to deal with her.

We find with chartered accountant students that they come to a point in their career where, if they are women, they suddenly cannot compete with a man because the male client has been in



business for 35 years or more and is not prepared to accept them as being his adviser. So, the client would likely say to me, "I would like you to reallocate staff." If I am able to do that, it means I have some redundant capacity, which is costing me money. If I do not have the redundant capacity, then I probably lose the client if he refuses to deal with that staff member. Either way I lose. I do not see how the government loses; I do not see how the particular woman loses.

One of the things that you can look at is whether or not the legislation allows someone to discriminate against a business. The act refers to a "person" in sections 1 through 5, or thereabouts. If I were to take the Income Tax Act definition of what a person is, it would include a body corporate. I do not see any place in that act where a person is defined, and my instincts tell me it is a natural person. But, conceivably, I could bring a case that said this person is discriminating against my corporation, which is a person in some definitions.

Mr. J. A. Taylor: Mr. Chairman, on that point--just for clarification--as I understand it, if the word is not defined in the terms of the Interpretation Act, under the Ontario Interpretation Act it would include a body corporate. Again, that is my understanding. Perhaps you could clarify that point.

Mr. Shaughnessy: Discrimination against a corporation on the grounds of place of origin or colour or whatever becomes rather foolish, I think. In any case, what I am left with, I suppose, are alternatives. I can break the law by dismissing that person and reducing my redundant capability. I can increase my costs. I can lose my customers, or I can somehow imprison them; I can refuse to allow them to leave. In my business that is not entirely impossible. You do tend to acquire a level of information and so on so that it makes it very difficult for a person to leave. In any case, I do not exactly see this as free enterprise. Imprisoning a customer strikes me as somewhat reprehensible.

In section 9 we have a number of definitions. They tend to be what I look at as general definitions. I find phrases like "directly," "indirectly," "any degree whatsoever," "by whatever means" generally have to be interpreted. Reading the act in an emotional way, I suspect that it is biased somewhat towards those persons suffering from historical or chronic disadvantage. I am not sure that is a bad thing but I do think that in a business, where you are faced with interpretation, you will always assume that interpretation is not the one you would like it to be.

Section 13 seems to me to be a bit silly. I cannot see why discrimination needs to be the primary issue. If I have other reasons to not hire someone, it would seem to me they would have precedence over the fact that the person I was dealing with might be part of an oppressed group.

Mr. Brandt: Are you talking about qualifications of the individual in question? If you had one person who was in a defined minority group who was underqualified for the position and another person who was qualified for a position but was in a majority group, your concern is that you would have to hire the minority?

Mr. Shaughnessy: No, I am not concerned about that because I would choose not to. I would take my chances with the commission. I do not think I would ever hire someone who was less capable just to avoid perceived or possible problems. But the way section 13 reads to me is that if I had to go before the commission, despite the fact there were other reasons for not hiring that person, I could still be in breach of the act.

Mr. Brandt: There is a caveat in the act which essentially boils down to two words, the "essential duties" relating to that particular job. If one of the essential duties was that the person carry with him a chartered accountant's degree, quite obviously you would not be hiring someone who only had a bookkeeper's course or something like that.

Mr. Shaughnessy: I agree with that, Mr. Brandt, but what I am more concerned with is a requirement in the job that this person deal with people who might not accept them because of their particular minority. In my business I have to have acceptance almost immediately because that person is coming from us, giving advice to someone, and I cannot afford to educate my clients for a day that this person is acceptable as a member of our staff.

Mr. Brandt: You are worried then about customer discrimination?

Mr. Shaughnessy: Absolutely.

On section 14, I guess it becomes a question in my mind if you choose not to discriminate against a particular group, how you can suddenly say that this person is a member of a preferred group, if you want, and therefore it is okay to discriminate against them. I think there are probably situations in the real world where that discrimination exists. It would likely go away over time. I do not think any businessman will do anything without a reason, and if he is doing something that is costing him money, he will soon find a way to avoid doing that.

Section 20 makes some sense except that someone on the commission must determine bona fide and reasonable grounds. Again, this interpretation becomes an uncertainty in the minds of business people.

Section 21(2) appears to provide a somewhat more rigorous demand when the contractual rights are tied up in the employment issue. I have a little trouble understanding 21(2), but it seems to me I could not create a disability contract which discriminated against, say, a woman without having reasonable grounds; and if I did have those reasonable grounds, I would be allowed to do it. In 21(2) it seems that the provision of reasonable grounds disappears. I am not sure that is intended or that in fact it even means that.

Section 21(3)(b) seems not to be available when the employee and employer share the cost. I suspect that is not really intended. It deals with employee benefit plans and there are provisions where it is an employee-paid or participant-paid plan that certain things happen. If it is shared I am not so sure it would. Most plans are shared to some extent.



1:40 a.m.

Section 23 is impossible, in my opinion, to comply with with any certainty. I think you have to sooner or later get jurisprudence or regulations that determined what reasonable care a prime contractor would need to take to ensure that he would not be dismissed from his contract because some subcontractor, which he had limited control over, chose not to comply with the act.

Again section 23(3), I just cannot see. I know in our situation dealing with clients, if we go to a bank and say, "ODC is guaranteeing this loan or ODC is putting in this money," the bank behaves a certain way. How they would protect themselves against having that grant removed at some future date is beyond me. I don't think they could. I am not so sure that it is reasonable to expect them to try. In general, I see as many application problems as are solved in part 11.

In part 111, we get into what businessmen generally believe --and I don't intend to remove myself from that--that there seems to be a tendency in governments, and not only provincial, that if something is worth doing it is worth doing with a big bureaucracy. I think that isn't necessarily the only way to go. I don't know how big the budgets are. I have asked Howard to deal with that a little bit.

I had an opportunity to talk last night with Dr. Elgie about section 26(1)(c). His comment was that it was only recommended. The commission could only recommend reverse discrimination or assertive action. The experience I think most businessmen have had is that if government recommends something sooner or later they will find the teeth to make it happen if it doesn't happen under the recommendation. I think that is a real fear.

The questions on doing research into attitudes and changing them, I think is largely a waste of time. It will happen if it should and it won't if it shouldn't. In general, we are looking at what I see to be a bureaucracy in the building. Certainly in the near term it is not an immediate problem, I am sure.

In section 27, we are faced with who is the information available to. I know the Quebec act has a provision that it is confidential only to the commission. This act stops somewhat short of saying that.

Section 30, I think, is the one that most of the clients I talked to were most concerned about. I know yesterday the lawyer who was here was saying, "You are not giving the commission any rights that they would not normally have." I think it is more a question of the way the thing is worded. The concerns are primarily around search without a warrant and question without counsel. I think perhaps a little education process now would be more in order.

The option available under section 38(1) strikes me as maybe a bit overdone. I am not necessarily opposed to having someone punished for breaching this act. I think it would be a pretty



overt case of discrimination where someone were fined or had mental anguish damages assigned against them. However, the concern of the people I have talked to was, "What about all these lawyers running around on contingent actions or class actions and so on?" That is a reasonable problem, I think.

Mr. J. A. Taylor: On that particular issue, as I understand it, it would be improper for a lawyer to take it on a contingency basis.

Mr. Shaughnessy: I don't think it is in Ontario any more. It was. I think the bar association would allow it.

Mr. J. A. Taylor: It allows champerty and maintenance. As I understand it, it wouldn't be ethical to do that. However, I am just pointing that out.

Mr. Shaughnessy: I agree.

Mr. J. A. Taylor: I am not suggesting that you won't have a lot more work for the legal profession.

Mr. Shaughnessy: They need it right now. It is a little hard in the real estate business. But in any case, I think one of the concerns in sections 38(2) and 38(3) on the assignment of reasonable things to do, particularly with handicapped persons, most people that I find in business have very little faith in civil servants to make reasonable decisions on what it costs to do something.

Again, I think that is a question that can't really be dealt with here. Fortunately, there is an appeal from anything that happens. It is not a very cheap appeal. The time factor alone is probably enough to have most people just pay up and go away. But I really think that is something that needs to be looked at.

I find the act to be very difficult to apply. The cost, conceivably, is very high and it is largely unknown. There would be almost no way you would be able to keep track of what business is paying to comply with this act.

One of the things that really concerns me is that I have a number of clients who are saying: "How do I turn my business down to make a reasonable living and avoid paying as much tax as I do? Why should I work 80 hours a week and have the government take 50 per cent of it when I could work 40 hours a week and still maintain my living?" I think that is a very big cost to our economy. This act imposes a cost on business which is what I look at as nonproductive cost. It is not aimed at improving the business in terms of its ability to deal in its marketplace.

I think governments in Canada have reached the point of no return with business. There are any number of them that are very concerned about incremental costs driving them over the point at which they will no longer carry on business here.

One of the things I find that is wrong, if you want, with the free enterprise system--it is a very effective system, it is very functional, it has within it the ability to withstand a great deal of punishment, if you want--is that the free enterprise system today is reaching the limits of its resilience. Professor Schumpeter at Harvard once said that the reason the free enterprise would fail is that it was so successful; it allowed so many opposing views to exist. I do not know whether governments know or have even thought about what the limit to the business resiliency in Canada is, but I do think they should soon look at it.

There are only a few other points I wanted to make. In basic form, uncertainty to a businessman equals risk. That is not a necessarily valid assumption on his part, but he will perceive it that way and he will behave that way. I think the greater uncertainty that remains in this act, the greater the risk is going to be perceived by a businessman. You have problems in that area because they will act to defend themselves as best they can. That is a cost to them that they do not want to incur, and in some cases they are going to say, "We choose to move to Alberta or we choose to move to Arizona," or wherever. I do not think that is what we really want to do here.

In general, the overall issue, as I see it, is that the government in this act is taking away from business the ability to fulfil its prime purpose. Its prime purpose is to discover markets and to take advantage of them. It is not to take its own resources and impose them on the marketplace. Business does not know the rules in this act. Most businessmen are just barely aware of it. I think if it were not for Claire Hoy, most of them would not know it exists. They are not aware of the applications. They do not trust civil servants to make reasonable decisions. The enforcement penalty provisions are biased in favour of the complainant, in their opinion.

Yesterday you were told--and I can quote it--that the human rights cases today are much more subtle and harder to prove. My immediate reaction to that yesterday was that if they are so subtle and hard to prove, do they really even exist? One of the things that has always concerned me with the creation of a bureaucracy is that if it ever by chance happened to solve the problem it was set up to solve, its only logical course of action would be to make the problem more subtle in order to sustain its own existence. I am not convinced that the Human Rights Code as it already exists in Ontario has not solved considerable portions of the problems that are attempting to be dealt with in this act.

Mr. J. A. Taylor: Sounds like one of Parkinson's laws.

Mr. Shaughnessy: I guess the way I look at it is if I set up say the American poverty commission, I know that if I am the director of that and I am successful in curing poverty in the US, then I am the new poor because I will be out of a job. So I will keep raising the level of problem and the need for me to solve it.

Mr. J. A. Taylor: I appreciate what you are saying. You do not have to draw a diagram, not for me anyway.



Mr. Shaughnessy: I do not have any more to say. If there are any questions, I would be happy to tell you I do not know the answers.

Mr. Brandt: In section 30 the minister has already made a statement in connection with that one, and it keeps coming back up again. I think he has clarified the section with respect to the so-called search and seizure powers. They boil down to the rights of entry only, and it really is not search and seizure without warrant. I think every member of the committee has been clarified on that point.

11:50 a.m.

The second one that you raised--and I think they are probably two areas of the bill that are most misunderstood--with respect to the right to have someone there during the period of questioning, that has also been very clearly identified by the minister as an area of the bill that is going to be rewritten. It was a drafting problem.

The intent was to keep a person who had an adversary position out of the room during the questioning, not a person sympathetic to the complainant as an example, so that he can have a lawyer or an interpreter if there was a language problem, or a friend or confidant or whoever in the room with him, and it is not intended that that be a part of the bill.

Mr. Riddell: It was a drafting error which fortunately this committee picked up. We can blame it on a drafting error.

Mr. Brandt: Well, it is a drafting error only in interpretation. One of the problems the human rights commission had was where you had an employer-employee relationship and where the employee was the complainant, in some instances there was a problem of badgering on the part of the employer if he was allowed into the room during the normal course of questioning, and we tried to clear up that problem. In so doing, we created another problem because the intent of it was misinterpreted. We are going to clear that up in the redrafting of that particular section. I simply wanted to clarify those points.

Mr. Shaughnessy: One of the comments I heard yesterday, I talked to one of my lawyer clients about and he referred to section 30 as the Spanish Inquisition section. I think that is overstated but--

Mr. Brandt: That is sort of a nice, ringing phrase that has absolutely no meaning in the intent of the bill and, with due respect to whoever the lawyer was, he is wrong.

Mr. Shaughnessy: I think the thing that is concerning people is the words mean one thing and the fabric of it means something else to them. They are more concerned, are they going to be dragged up before the commission, and Dr. Elgie again pointed out that the commission has been beyond fair, I think, in a lot of cases. That sort of fabric causes a lot of concern. I am not here to say that the bill is wrong or anything else. I am just saying there are a lot of concerns out there and the business people--



Mr. Riddell: Lawyers would love to work the fabric into the words or the words into the fabric, and they would have a heyday with that.

Mr. Shaughnessy: There will always be an even number of lawyers because there has to be one on each side. Two of them are employed with every case. I think there is nothing wrong with the concept, but I do think the concept that business is being asked to pay for this largely is a bit wrong. If it can be explained that there is some benefit to that cost, business will spend money on anything any day if there is a benefit.

Mr. Kennedy: With respect to 21(3)(b), insurance plans for employees, Mr. Shaughnessy mentions a shared contribution. He says: "Section 21(3)(b) seems not to be available where the employee and employer share the cost of a plan. Is this intended?" It is quite true that many employment situations--

Mr. Shaughnessy: I think in the situation where there are fewer than 25 employees it is almost an exclusively shared cost.

Mr. Kennedy: I do not know if that excludes that kind of situation here or whether we need a phrase in there with reference to shared cost.

Mr. Brandt: Could you elaborate again on what your concern is with respect to that?

Mr. Shaughnessy: What I am seeing in section 21(3)(b) is that where a reasonable distinction is made and so on in respect of an employee-pay-all or a participant-pay-all benefit, I do not see why that employee-pay-all or participant-pay-all clause needs to be there at all. If you delete it you can pick up any possible combinations. I think discrimination is more apt to occur in disability plans and so on than it is in pension plans, unless there are guaranteed life annuities with standardized benefit payout, rather than a money-buy type plan.

Mr. Brandt: We have had representation from the insurance industries and to the best of my recollection they did not pick up this particular clause as being of concern to them. Maybe the committee members could clarify that, but certainly they did not see any problem with it.

Mr. Kennedy: Could the minister take a look at that--

Mr. Brandt: Sure.

Mr. Kennedy:--and see if it is all-inclusive and if there is a problem?

Mr. J. A. Taylor: Where do you practise, Mr. Shaughnessy?

Mr. Shaughnessy: In Cobourg, the heart of Northumberland county.

Mr. J. A. Taylor: I want to say, Mr. Chairman, that I

think it is certainly commendable of Mr. Shaughnessy to take the time that he has obviously taken in the preparation of this submission and to come before the committee addressing his concerns.

My question following that was a general one; that is, in your profession and the people that you come into touch with, do you find a growing awareness of this particular bill and, with that, a feeling of apprehension on the part of those persons?

Mr. Shaughnessy: I would say that any government regulatory bill is a cause of apprehension. This bill, I think, is largely unknown. People that are in business are concerned about impositions on how they carry on their business.

In Northumberland county, quite frankly, I do not see that there is a particular problem in the areas of race and so on, only because there are few people that could be discriminated against. In Toronto--

Mr. J. A. Taylor: You mean the traditional grounds for discrimination do not pose any real problem; so I gather what you are concerned about is the extended grounds of discrimination and how they impact on everyday living or business.

Mr. Shaughnessy: One of the concerns I had stated to me was: "I have a restaurant on the second floor of a building without an elevator. Would I be required to put one in?" And the obvious question that comes out of that is: "What if I do not own the building? What do I do then? Am I required, conceivably, to move my restaurant to the ground floor location and put a ramp in?"

Mr. Brandt: The answer is no.

Mr. Shaughnessy: I think that is no too, but this is the kind of thing that people are thinking, admittedly wrongly and almost certainly wrongly. But, in that the commission does have rather sweeping powers, at least on the surface, people are going to be concerned about it.

Mr. Brandt: Under page three, part four, where you indicate that generally the private sector does not trust a board of civil servants, I should clarify that board is not made up of civil servants. It is appointed by the minister, and usually these people are taken from the public at large, people that he deems to be qualified and responsible and balanced in their judgement and so forth. Conceivably you could be on that board.

You may not trust civil servants as such, and I think you might be correct in your assessment on occasion, but the facts of the matter are that there is some balance in this board that you have concern about, that it is a public board and that is appointed by the minister; so it is not civil servants.

Mr. Riddell: Sometimes known as Tory hacks.

Mr. Brandt: Or Liberal rejects.

Mr. J. A. Taylor: On the contrary, Jack--well, I will not comment on the composition of some of these boards and tribunals, but I am sure that if there was maybe a judicial exercise of conservative discretion the makeup might even be better.

Mr. Kennedy: There is no evidence of partisanship on any of them.

Interjections.

Mr. Chairman: Let us get back to the reason Mr. Shaughnessy is here.

Thank you very much. I think you have pointed out that, rightly or wrongly, there is concern; I do not think anybody on this committee disputes that, and we will have to address that too.

Thank you.

Mr. Shaughnessy: Thank you for your time.

2 noon

Mr. Chairman: Mr. Babineau.

Mr. Babineau: Mr. Chairman, members, ladies and gentlemen, complaints that I raised before the United Nations arose from the fact that certain letters written to the Ontario government and to the Ontario Ombudsman remained unanswered. If that is the case, can we judge the integrity of the decisions that are being made?

Before I start, maybe I should read through what the case is all about.

On June 23, 1980, the Ontario Press Council dismissed Mr. Babineau's complaints against the Toronto Star. These complaints concerned alleged bias on the part of this newspaper. You can refer to page 22 of my petition to the United Nations.

On November 12, 1980, Mr. Babineau filed an amended statement of complaint with the human rights commission against the Ontario Press Council.

On December 11, 1980, the commission informed Mr. Babineau that it lacked jurisdiction to intervene in the dispute on the grounds that such an intervention would constitute interference with the freedom of the press. The complaint with the Ontario Human Rights Commission was not at this point against the Toronto Star, but rather against the Ontario Press Council in the handling of the complaint against the Toronto Star.

On December 21, 1980, Mr. Babineau met with Mr. Edward R. Singleton of the office of the Ombudsman at the Legislative Building to try to establish if there was room to make an appeal against the Ontario Human Rights Commission for failing to act on



my complaint. At that meeting, it was felt that the office of the Ombudsman had jurisdiction.

On January 26, 1981, I wrote to Mr. Singleton indicating I would file an official complaint against the Ontario Human Rights Commission. I also wrote to the Ontario Human Rights Commission, indicating my intent to file such a complaint.

On February 28, 1981, the Ontario Human Rights Commission informed me that they would be reviewing the case.

On March 24, 1981, I requested of the commission to have a meeting with legal counsel of the commission to discuss certain matters. This letter to date has not been responded to.

In order for me to file a complaint before the United Nations, I had to do it within six months, and I sent it by registered mail the day before it left Toronto.

I think basically the part of my concern, reading through the proposed bill, is that there is no leeway; there is leeway at the time the commission decides to act, but there is no leeway at the time the commission has to act. The commission can sit on it for 10 years and nothing can be done. If I had had the decision either pro or con, it was subject to appeal. But so long as the decision was under consideration there was nothing I could do.

Some of these concerns have great bearing on matters now before the public. Part of my complaint against the Toronto Star was their refusal to attend a press conference that I called where I asked for the Chief Justice of the Supreme Court of Canada (inaudible) that he had made in an earlier case which came to light in the Forest case. Subsequent to that I had appealed before Judge Martin in chambers, asking to intervene in the Forest case. That request was turned down. It was dismissed. The reason (inaudible) question.

I again went to the Supreme Court of Canada, requesting them to intervene on behalf of the French Canadians. That request has also been turned down.

My contention at this point is, if you don't have the press, if you don't have parliamentary government and if you don't have the courts, where is democracy? If we have one of those components, we can hold the other two in check; but if we don't have any of them, we are doomed. I guess this is one of the bones of my contention.

On May 1, 1980, Marion Bryden tabled a petition on my behalf in the Legislative Assembly. But we found that the Attorney General made certain erroneous allegations with regard to my petition. I attempted, through Ms. Bryden, to file another petition to seek clarification. She refused to table that petition. I went to her leader, Mr. Cassidy. He refused to act on it. I brought this matter to the attention of the Leader of the Opposition; he too refused to act on it.

There is a good chance that in the (inaudible) case, which is supposed to be heard before the Supreme Court of Canada some time in the future, my contention will be proven right. At that point in time I will have been deprived of the possibility to address the Legislative Assembly of Ontario, which is my right.

One interesting point that I thought of was to address the same petition to all the members of the assembly, asking them to present it. If that failed, then I would have had the option of going to the Lieutenant Governor and asking him to dismiss the assembly because I couldn't get my rights. That is one point I have been thinking of, and it is probably one that could create a very interesting issue.

At this point in time I will recess. If you have any questions, feel free to ask them.

Mr. Chairman: Thank you, Mr. Babineau. Are there any questions anyone has?

Mr. Brandt: My understanding is that the ministry has responded to your letter and it is on its way. I don't know what that response contains in terms of specifics but, so the other members of the committee will know, the minister has written back to you in connection with your concerns. It may or may not be satisfactory.

Mr. Chairman: Okay? Thank you very much, Mr. Babineau.

2:10 p.m.

The Chinese Canadian National Council for Equality have a joint brief with the Council of Chinese Canadians in Ontario; Miss Susan Eng and Miss Rose Lee.

Miss Eng: Thank you, Mr. Chairman. This submission is being presented on behalf of three organizations which derive their membership from the Chinese-Canadian community, the Chinese Canadian National Council for Equality, the Council of Chinese Canadians in Ontario and Chinese Canadians for Mutual Advancement.

The Chinese Canadian National Council for Equality is a national organization, which has 650 active members in Metropolitan Toronto, 1,000 active members in Ontario and 8,000 active members across Canada. It has 16 local chapters across Canada and, of these, four are located in Ontario, in Toronto, Ottawa, London and Windsor. In addition, there are local co-ordinators and liaison people in three other Ontario cities, Kingston, Hamilton and Sarnia.

The Council of Chinese Canadians in Ontario is an Ontario-based organization, which has 400 active members. The Chinese Canadians for Mutual Advancement has 80 active members.

While it is not being suggested that the three organizations represent the views of the Chinese community as a whole, they represent a new, organized and vocal segment of the community



which has recently taken a very active role in issues affecting the Chinese community in Ontario and across Canada, a community which is rapidly growing. In Ontario alone, there are 200,000 people of Chinese descent. Of these, over 100,000 reside in Metropolitan Toronto.

The Chinese community has represented an important constituency. For example, in the St. Andrew-St. Patrick riding, from 7,000 to 10,000 of the 38,589 persons eligible to vote in the March 1981 provincial election were of Chinese descent. In the recent federal by-election in the Spadina riding, more than 7,000 of the 38,000 voters were members of the Chinese community.

In presenting these figures, it is not suggested that these three organizations represent the entire Chinese community. Nor does it mean that the mandate of the organizations is confined to the interests of the Chinese-Canadian community. Rather, our first purpose here today is to voice our support for the very important principles set out in the proposed Human Rights Code, in particular, the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of his or her community and able to contribute fully to the development and wellbeing of the community and the province.

This part of the policy statement is particularly important to a community which consists of people whose parents or grandparents were immigrants or who themselves are immigrants. The desire to belong and to contribute to the Canadian community as a whole is therefore foremost in their minds.

Further, unlike many European immigrant groups, our ethnic and racial origins will remain distinctive regardless of the number of generations we live in Canada. It doesn't wash off. Hence, the Chinese community has an obvious vested interest in supporting legislation that outlaws discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin and citizenship. However, this by no means diminishes the community support for the code's sanctions against the other grounds of discrimination.

Our support for the policy of Bill 7 is clear. The second purpose of our presentation is to outline some of our concerns which we feel have not been addressed by the bill. By and large, these concerns relate to the inadequacies of the administrative machinery. The tragedy, in our view, would be for the very important objectives of the bill to be constrained or even defeated by an administrative and enforcement structure that does not permit effective implementation of the objectives.

Our recommendations are contained in the written submission which has already been provided to the committee and attached to the text of the brief. Very briefly, however, the Chinese Canadian National Council for Equality, the Council of Chinese Canadians in Ontario and Chinese Canadians for Mutual Advancement have the following recommendations:



1. The human rights commission should be independent of any government ministry and should be responsible directly to the legislature.

2. The human rights commission should take an active role in monitoring intermediaries, such as employment agencies, in order to uncover discriminatory practices of which the victims may not be aware. The brief submitted by the Canadian Civil Liberties Association illustrates the extent of the problem in this area.

3. There must be adequate funding in order to prevent delays in resolving complaints and to provide effective public relations and public education and research programs.

4. In the area of enforcement, the right to prosecute should be available without the consent of the Attorney General and a civil remedy should be provided.

5. Dissemination of hate literature is no doubt one of the more difficult areas of conduct to regulate or prohibit. Depending on the interpretation put on the words of section 12 of the bill, the section could be read as seriously impeding the freedom of speech while being inadequate to actually provide a sanction against the dissemination of hate literature. We recommend that the section be redrafted to make it clear that there are no constraints on the expression of opinion, while ensuring that the very real threat to racial harmony presented by hate literature is circumscribed.

We have attached a copy of the recent Civil Rights Protection Act of British Columbia, and it may be of some assistance to the committee. We do not necessarily endorse the BC provisions, but we are supplying them only for the purposes of information for the committee.

6. Coverage of the code should be extended to include sexual orientation and political beliefs as prohibited grounds of discrimination. The Quebec Charter of Human Rights and Freedoms provides protection from discrimination on both grounds, and Newfoundland, Prince Edward Island, Manitoba and British Columbia have recognized political belief as a prohibited ground for discrimination in employment.

We have also read and endorsed generally the other recommendations in the brief submitted by the Canadian Civil Liberties Association and the Urban Alliance on Race Relations, particularly in respect of the CCLA recommendations that provisions be made to reduce structural inequities in the employment of minority groups.

Our third purpose here today is to address certain misleading statements about the so-called search and seizure power contained in the proposed bill. As succinctly explained in a recent Toronto Star article by Alan Borovoy, as well as by the Minister of Labour in his statement to this committee September 10, 1981, the powers accorded to the human rights officers consist of the power to enter business premises at any reasonable time

without a warrant, to question persons, to require production of relevant documents and to remove and copy and return documents which are pertinent to a particular complaint.

There is no power to enter domestic premises, no power to ransack business premises or to enforce production of the documents which are requested. Rather, a warrant must be sought in order to obtain documents and evidence which the property owner refuses to produce upon request.

This limited intrusion on places of business is necessary, in our opinion, for the effective investigation of complaints which by their very nature rarely generate tangible evidence. Witnesses and documentation can usually only be found at a place of business where employment records and other employees will provide the required evidence of discrimination.

It is therefore submitted that the amendments that the Minister of Labour (Mr. Elgie) has undertaken to make must not diminish what, in our opinion, is already the tenuous effectiveness of the enforcement powers contained in the bill.

Finally, we would like to take this opportunity to commend the government of Ontario for its stand on the entrenchment of the charter of rights in the proposed Canadian constitution. The initiative that the province has taken in introducing Bill 7 and the action it is hoped that it will take to strengthen the provisions of the bill, as recommended by a significant number of community and human rights groups, will convince all of the people of Ontario that the province's public stance is backed by a genuine commitment to the protection of human rights in Ontario and in Canada as a whole. Thank you very much.

Mr. Chairman: Thank you very much. Are there any questions?

Mr. Eaton: Yours is a positive approach.

Miss Eng: Thank you.

12:20 p.m.

Mr. Riddell: I notice, going back to the one that you did not read here, you say: "We support the positive aspects of the proposed revisions, which include extending the protection of the code to...persons between 18 and 65 years." Do you have second thoughts on that, the 18 to 65 range? In other words, once a person becomes 65 years of age, is that person then out of any kind of discrimination?

Miss Eng: I understand that the setting of the age of 65 years is something that has been under a lot of discussion and the subject of representations by representatives of senior citizen groups. We are aware of the fact that there has been a policy decision made in respect of the age of 65 years. I assume that amendments will follow if the representations on behalf of the senior citizen groups are heard and accepted.



At this time we are supporting the fact that the age limitation has been extended from the previous code provisions. We are not necessarily suggesting that we support an upper limit of 55 years.

Mr. Riddell: It just strengthens the committee's hands if we have people expressing their views on the age limitation.

Miss Eng: I think we would be prepared to discuss this in the community groups. It is not an area on which we have focused our attention at the present time.

Mr. R. F. Johnston: That is really a first-rate presentation. Thank you very much, especially for your comments on the search and seizure section and a couple of other sections which I think are very important to us.

I am interested in one area that you did not speak to except to say that you were glad that sexual harassment was included as grounds here. I wonder if you have talked in your collective groups about the nature of the wording there, "persistent sexual harassment," and if there are any concerns about our need to tighten that up or to leave it as it is.

Miss Eng: This area has been dealt with by a number of submissions, including those of the civil liberties association as well as the urban alliance and the women's groups. The actual wording of the provision is something that I am probably not in a position to discuss in detail. However, when we speak in terms of persistent harassment, that can be viewed as a loophole by which many continued practices could be not covered by the provisions of the act, but at the same time they should be prohibited as well. But because of the word "persistent" it is a matter of judgement and may create problems.

Mr. R. F. Johnston: The other thing that really pleased me in the way you made distinctions was in terms of the hate literature side of things. The committee is going to have to come to grips with that notion of making a clear statement on the freedom of the press section of it. Also, I like your emphasis, the way you have put the need to make sure that the dissemination directly of hate literature is something that we deal with strongly and firmly.

Miss Eng: Thank you.

Mr. Eaton: I have a question in regard to your comments on the right to prosecute. Are you suggesting there that, if the commission decided they did not have a case, an individual could proceed himself to carry a case to the courts?

Miss Eng: I knew this question was going to come up. The right to prosecute without requiring the consent of the Attorney General is suggested as an alternative. It is true that it is presented as an alternative to redress that is available through the human rights commission and the boards of inquiry.



I think at one point you have to suggest that you rely on the judgement and the integrity of the human rights commission and the boards of inquiry, but there will be situations where for one reason or another they perhaps will feel that they will not proceed in respect of a complaint, and a citizen should be entitled to lay a charge--

Mr. Eaton: Proceed at his own cost in the courts.

Miss Eng: Yes, and lay a charge before a justice of the peace.

Mr. Eaton: That was the indication by the Quebec Human Rights Commission yesterday, that they could do that.

Mr. Chairman: Are there any other questions?

Ms. Copps: You have also chosen to include a couple of issues that have not been touched upon in the proposed code. Those are the issues of sexual orientation and political beliefs. I am pleasantly surprised that you spoke out on them, and I just wondered what your rationale for that was.

Miss Eng: The surprise comes from the fact, I suppose, that it has been a source of great controversy and almost stops the code going through at all. If those provisions are left out for that reason alone and the bill in its current form goes ahead, our position may be weakened.

However, it is out contention that if we are dealing with the general principle of equality for all people, and dignity of all people in Ontario, Canada and the world, hopefully, then matters of personal belief, such as sexual orientation and political beliefs, should not be circumscribed and should not be sources of discrimination.

Ms. Copps: Very well spoken.

Mr. Chairman: Thank you very much for appearing before us today.

Mr. Campbell.

Reverend Campbell: Mr. Chairman, because of an emergency which arose in our office early this week I regret that it has been impossible to have this brief typed and copies prepared for distribution to the members of this committee today. It will be available in a day or two. We do, however, have some substantial support material for distribution to committee members which is being distributed now.

May I say, to begin with, that I am not here today with a critique of Bill 7 particularly, but we do agree with much that has been said in that vein. We are here to draw the attention of this committee to the violation of fundamental human rights of Ontario parents which has been, at least until recently, perceived as an acceptable circumstance.

At the launching rally of the pro-family Renaissance movement on March 28, 1974, Mr. Larry Henderson, editor of the Catholic Register, challenged the nearly 1,000 parents who filled the Milton High School auditorium: "Parents, get the education of children back into your hands or you'll lose your children." Thus, Renaissance was begun with a basic commitment to correct the gross isolation, perpetrated particularly by the educational policies of the Ontario government, of article 2(6), the UN Universal Declaration of Human Rights, "Parents have a prior right to choose the education that should be given to their children."

In the material that is being circulated there is a little piece with a Pied Piper in which we state, under item seven, the original purposes for which Renaissance was established: "to provide, through the philosophy governing the public educational system, an expression of the wisdom of adulthood and the moral guidance of parenthood to our youth and our schools; to insist on re-emphasis on academic excellence in the basic educational disciplines; to liberate the system from a dogmatic secularism by the presentation of a dynamic balanced dualism which recognizes two ultimate models of origins, the theistic and the atheistic, in the textbooks and classrooms of our system."

The Renaissance brief has been prepared for presentation to this committee (1) to call the attention of this committee to the extent of which the most fundamental of human rights are being systematically violated by the policies of the Ontario Ministry of Education and (2) to call for a ban on discrimination based on family orientation to be included in the Ontario Human Rights Code.

First, in regard to the violations of fundamental human rights perpetrated by the educational policies of the government of Ontario: Renaissance is committed to the view that the family is the basic cell of a free and responsible society, the most dynamic environment in which a child may be nurtured to creative adulthood. That view, we were assured three years ago, is also held by the Ontario Ministry of Education but is not shared by three of the four Ontario teachers' federations which sponsored the La Pierre study of the education of the young child, commissioned and funded by four Ontario teachers' federations.

12:30 p.m.

In an interview published in the Toronto Star in midsummer 1978, Dr. La Pierre was quoted as saying: "The Ontario child is not a family child but an institutional child. It is not the school which is the extension of the home, but the home which is the extension of the school."

The totalitarian implications of that statement startled Ontario parents into a protest to the teachers' federations of their support for the propagation of such a philosophy through their funding of the La Pierre commission. Both the ministry and the Ontario Catholic Women Teachers' Federation dissociated themselves from this expression of the La Pierre political philosophy. The other three sponsoring teachers' federations refused to do so.



That circumstance however, led to the establishment of the Renaissance Commission on the Family, chaired by child psychologist Dr. Blair Shaw and funded by concerned parents, first in Ontario and then across Canada, which held hearings from coast to coast during the year of the child, 1979.

From the more than 20,000 submissions and briefs received by Dr. Shaw, a 100-page report on the family was published. Although there are no longer any copies of the first edition of this report available, I have brought copies of Dr. Shaw's parents' school book, which is a response by the chairman of the Renaissance Commission on the Family to many of the same educational concerns to which the report on the family were addressed.

It is apparent, however, that there is a general perception among parents throughout Ontario and across Canada that government agencies, such as the public school system, are no longer supportive of the fundamental human rights of parents and of the sanctity of the family but increasingly do treat the child as a ward of the state rather than as a member of the family.

It is obvious, from the attitude of the Ontario teachers' federations noted above, that there is no longer an acceptance by the leaders of the teachers' unions of the traditional role of the teacher in the classroom in loco parentis, in the place of the parent, but rather the teacher is seen as being in the classroom in loco unionitis, on behalf of the unions.

Of this totalitarian trend in public education, Donald Erikson of Simon Fraser University observed: "Governments have usurped the role of parents in education and are now acting as superparents, imposing their own idea of what is responsible adulthood and a good society. This is an almost terrifying invasion of individual liberty. If there is anything needed in education today, it is options--not only for learning skills but also with respect to lifestyles."

May I say in connection with that last comment, regarding in loco unionitis, there was a front-page story in the late Oakville Journal-Record two years ago about a teacher teaching grades 3 and 4 in an Oakville public school who was appearing nightly at Yuk Yuk's and who in the interview said: "The humour I am communicating in my nightly performance is not based on my profession as a teacher--there is no fun in teaching today--but rather on my outrageous homosexual lifestyle."

I phoned a trustee in Oakville to ask what the response of the trustees was, in view of their responsibilities to the parents of the region, to that open advocacy of such a lifestyle. Most parents who love their children seek to develop the capacity in their children to discriminate between what is creative and what is destructive in sexual orientation, whether it is heterosexual swinging or homosexuality. Most parents do seek to develop a sense of discrimination between what is creative and what is destructive in one's personal lifestyle. To be forced to send their children into a classroom taught by one who on the front page of the local



newspaper is nightly entertaining a crowd at Yuk Yuk's based on its avowed homosexual lifestyle is, I repeat, a gross violation of the most fundamental of human rights in the province of Ontario.

When I spoke to the trustee of this incident--and I reminded him that I was preparing my annual letter to the Minister of Education, late in the year, at the time that I pay the educational portion of our property taxes under protest--he said: You are writing to the wrong person if you intend to raise that issue with the Minister of Education. You should be writing to the president of the teachers' federation. We have no control. We, as trustees, cannot control or interfere in the role modelling that is being done by teachers in the classroom, where we are forced by law here in Ontario to send our children."

Is there a question on that? I am willing to stop.

Mr. R. F. Johnston: He is wrong.

Reverend Campbell: He is wrong?

Mr. R. F. Johnston: I told you that. He is wrong. We have had (inaudible) through the act a number of times.

Mr. Chairman: (Inaudible) suggest you find another one, but that is the only comment I have.

Reverend Campbell: well, he is a fairly competent person, but that was his advice on that matter. Perhaps there will be an elaboration in a further comment here on that problem. Let us leave it for a moment.

The fundamental objective of Renaissance Ontario in its nearly \$500,000, privately funded, seven-year campaign--and that private funding is from \$5 and \$10 gifts from concerned parents primarily--for the reform of the Ontario public school system has been to liberate the family from the domination of the state, especially in the raising of children.

You have in your hand a copy of Tempest in a Teapot, which is a documentary account of the founding year of the Renaissance movement. You will find, if you wish to do some exploring of that, that there is a covering of pretty well the whole gamut of parental frustrations in attempting to approach the educational system responsible for serving us the consumers, paid to serve us the consumers, the parents, but which we have found widely perceived to be instead imposing its own value system on parents.

From the first brief, which we presented to the Minister of Education in the fall of 1974, we have called for economic and social justice in the policies of a tax-funded public school system serving a pluralistic society which would enable parents to choose, without social or economic penalty, the education they prefer for their children and, I may say, teachers likewise to prefer the philosophic context in which they are pursuing their teaching career.

Some civilized mechanism must be devised and implemented which in effect would allow the educational tax dollar to follow the child to the school of the parents' choice. Presently, Catholic parents are denied that right from grades 11 to 13. Similarly, non-Catholic Christian parents are denied that right entirely, as are Jewish parents and other significant groups who reject the religion of secularism which is propagated exclusively in the government school system.

As one family of hundreds of thousands of families in Ontario, our own experience in regard to section 229(lc), a section of the Ontario Education Act which requires as the duty of a teacher the inculcating of the values of our Judaeo-Christian heritage, we have been forced over the last seven years to remove our children from the public school environment in our area to find an educational environment compatible with the commitments of our home and compatible indeed with the requirements of section 229(lc) of the Education Act.

We have been fined as parents for keeping the law that is not kept by the public school system. I speak only as one anguished parent who happens to be fully supported by my wife in this commitment. We were fully together on this and were prepared, as a result, to do some radical adjusting in our priorities to be able to provide for our five children an education in an environment that was an extension of our home--not out of economic affluence or out of social snobbery or out of religious bigotry, but simply because we are discriminated against in Ontario for being parents to our children.

In *The Crisis of Consent*, a Renaissance critique of moral values education in Ontario, Dr. David Stewart clearly identifies the dilemma facing educators and parents in the present public school structure in Ontario. He argues for educational reforms to correct these violations of fundamental human rights in Ontario public schools.

Dr. Kathleen Gow, in her recently published book *Yes, Virginia, There is Right and Wrong*, has expanded on this exposé of the moral dilemma of the public schools serving a pluralistic society and argued for such educational reforms as Renaissance has advocated for seven years.

12:40 p.m.

In our first brief to the ministry, let me draw your attention to several pertinent recommendations--see pages 260 to 265 of *Tempest*--recommendations to correct this violation of fundamental human rights, particularly page 265 concerning pluralism in the public schools. I won't take time this time of morning from the committee, but may I draw your attention to that; you may perhaps turn the corner of the page and follow through.

We recommend essentially that there should be a reforming of the structure of the public school system to make it responsive to



the realities of a pluralistic society and to make educational alternatives available to parents without at least punitive economic costs.

Further, on page 272, concerning an every-householder opinion survey that we conducted at considerable cost throughout the Halton region of Ontario to 70,000 householders, the responses to the first three questions are interesting. The questions essentially boiled down to: "If you had the choice, which environment would you prefer?" It is interesting to see there is a very strong majority perception that they would prefer the influences of, say, Moses and Jesus in the philosophy of the classroom, where the children are being prepared to life, to that of, say, Nietzsche, Darwin or Freud. That was just in passing.

It is also interesting to note not only those questions but also questions 19 and 20: "Are you in favour of the presentation of both ultimate models of origins, theistic and atheistic?" We are not talking about a Genesis I account versus Darwin's views; we are talking about two scientific models, one which assumes the existence of God and one which does not, and that there be a presentation of both ultimate models in the classroom.

Most parents would prefer that approach. They are denied that presently in the province of Ontario. That is in the schooling of the children. It is a fundamental human right and a fundamental issue. In fact, it is so fundamental that I would quote Dr. Viktor Frankl, the noted, world-famous psychiatrist, speaking at Massey Hall three or four years ago: "Youth today are suffering from despair over meaninglessness. I blame many modern educators for having robbed our youth of their enthusiasm for life by holding out a view of man which reduces him to the level of an animal."

I submit that when the tax-funded public school system presents only a view of origins that assumes the scientific, atheistic view of origins it has a profoundly devastating effect upon the perception of self by the young person. Whether you are made in the image of God and a little lower than the angels or are a meaningless collection of molecules that has evolved from a monkey has a profound effect upon your lifestyle. So I suggest that parents have reason to be deeply distressed at the violation of their human rights in this regard.

Finally, on pages 276 to 293 of the second brief, having to do with recommendations for correcting the violation of these rights of parents in Ontario at present, we have called for such a democratic mechanism as the voucher system for correcting the economic injustices of the funding of the present educational system in Ontario.

We note with gratification the extent to which the government is beginning to respond to the growing public demands for such educational reform. The NDP expressed qualified support for such reforms. Michele Landsberg, in her column in the Toronto Star a year or so ago, predicted that by 1990 all education in Ontario would be funded by the voucher system and commended this democratic approach to liberating parents from the present



discrimination they experience in Ontario. The Toronto Star reported they had the greatest outpouring of mail in response to any column they have ever seen.

May I say that in the last election campaign the Liberals called for the establishment of an all-party committee to recommend mechanisms for correcting these human rights violations in public education, and the leader of the Liberal Party, Dr. Smith, expressed his own preference for the voucher system.

Third, the government spent considerable time discussing such proposals as the voucher system at its Huntsville meeting early this fall. Reports in the newspapers of those discussions have triggered an unprecedented response in letters to the editor.

If I may pass this around--I just brought along one recent edition of the Toronto Star letters to the editor page; as I recall, there have been four or five pages, including Monday's Toronto Star, which have carried virtually this many letters in response to reports on the Huntsville weekend. It has indicated overwhelming support for such reforms as the voucher system from the public. Such educational reforms would correct the cause of most social tensions now created by the present monolithic school system in Ontario.

I will not take time to again press particulars that are probably covered at least in passing in Tempest, for example, but in a number of areas there has been tremendous social friction created by the areas of intrusion into violation of human rights, such as book selection policies.

A neighbour of ours, a lady, said when she was distressed by the kind of literature recommended to her child in the school, the response of the school to her concern was, "You need to see a shrink." That is terribly degrading. People say, "Why the parental apathy today in the public school system?" It's because so often parents with legitimate concerns about what they perceive to be a lack of support to their parenting of the children from the school system receive that kind of degrading putdown when they approach the school system.

Very few parents will approach the school system. But there are some of us who have been radicalized into seeking to identify those concerns and to approach school systems and the ministry to articulate what these concerns are and to propose corrections for those problems.

The Lord's prayer in the school: It is a terrible violation of fundamental human rights that there should be an imposition of the prayer that Christ taught those who had chosen to follow Him to pray, that that prayer should be forced on to children from all the homes in a pluralistic society in a government school. Caesar forcing Jesus on the general public, if you please--on a captive audience.

I happen to be a clergyman and have been a follower of Christ for 30 years, and I want to say I find that to be as deeply offensive to the spirit of Christ as anything I can think of; it

s virtually required by law, and that custom is followed in most Ontario schools.

I don't get a great deal of support from little old bible-clutching friends across the province for speaking out on this, but I find it a dreadful violation of fundamental human rights in a school system that should be at least seeking to avoid that sort of imposition of one religious value on everyone in the class.

We have expressed concerns about sex education where the Ministry of Education only provides funding and materials for sex education based on a progressive--and I use the most charitable terminology--view of sex education. There is no option for those who prefer a traditional approach to sex education based on self-discipline. That stream is not available for parents in the public school system of the province of Ontario.

May I say to the members of this committee that we are here because again we are speaking of some of the most fundamental human rights that are being violated here in the province of Ontario. I would suggest that parents ought to be able to opt their children into either a progressive sex education program, a traditional sex education program or not be required to put the children into either if they are doing what they consider to be an adequate, sensitive approach to this in their own homes. I repeat, that is an area of enormous frustration for parents.

12:50 p.m.

Finally, the banning of discrimination based on sexual orientation in the hiring of teachers: Here in the province of Ontario last fall the Toronto Board of Education adopted a motion banning discrimination based on sexual orientation in the Toronto Board of Education, which means for many frustrated parents again that in the hiring of teachers, and the role modelling that's involved, there must be no support of parental concerns to encourage children to choose between the creative and the destructive in sexual orientation.

Dr. Ernest Marsnall Howse, ex-moderator of the United Church of Canada, very pointedly and pungently said, "I am looking for the day when to be a discriminating person is not to be a monolith of prejudice but a connoisseur of excellence."

Surely parents have a right to expect the board of education, as required by the Ontario government, both by the ministry and by the Ontario Human Rights Commission, to see that their rights are protected in the environment where their children are being prepared for adulthood. But when we protested to the Ministry of Education and to the director of the human rights commission here in Ontario, that gross violation of the human rights of a majority of parents forced to send their children into the public school system in Toronto last year, we were told there is no protection in that regard.

This leads me then to our recommendation that the Ontario Human Rights Code ban discrimination based on family orientation.



There should be no discrimination against parents because they choose to affirm their responsibilities for the raising of their children. Presently, parents in Ontario who are not satisfied with the secular approach of the tax-funded public school system are grossly discriminated against when they seek options compatible to their own family values and commitments.

In the bill, I note references to "family." It seems that the concern about banning discrimination based on family has to do primarily with accommodations and does not reach into the areas we have addressed ourselves to in this brief, which have to do primarily with what we characterize as family orientation. Such a ban would protect the family from the imposition into parental spheres of responsibilities of government agencies advocating values alien to those of the parents. It's obvious, for instance, that to ban discrimination based on sexual orientation will be to force on parents in the classroom, through the role modelling of the teachers, the advocating of a lifestyle that parents reject.

The government is to be commended for resisting and rejecting the well-orchestrated and persistent clamouring of the militant fringe of the homosexual community to have included in this Human Rights Code a ban on discrimination based on sexual orientation. In the package that will be distributed to the committee members in the next day or two we will include a copy of the Renaissance response to the Bruner report, for example, that touches on this and a copy of the Renaissance position regarding homosexual rights.

We are strongly supportive of the human rights of everyone and, because of that, are concerned about the old saying, "Your right to swing your arm stops at the end of my nose." Obviously there has to be a protection of the human rights of those most directly involved in the classroom--the parents--from those who would exploit that classroom situation to impose an alien set of values or lifestyle on the children and the parents.

Such anti-family militants, by the way, do a disservice to the cause of the legitimate human rights of homosexuals, and Renaissance has spoken out strongly in defence of the fundamental human rights of homosexuals. For example, after the bath-house raids, it was Renaissance that spoke out to express concern that it may be that the state has violated the fundamental rights of homosexual adults to pursue their own inclinations in privacy. That has been our position.

But when it comes to the classroom or other areas in which parental rights are primarily at stake, we find most offensive any suggestion that the law should give special privileges to a minority group whose common characteristic is that they have a chosen or learned behaviour or lifestyle such as the homosexual orientation.

I have two or three final comments I want to make quickly, leaving the educational concern.

Government intrusion into religion: In this connection, we wish to express our apprehension over tendencies for governments



the name of human rights to impose the morality of a secular state on religion.

It was mentioned by the last delegation to appear before his committee that the province of Quebec has included a ban on discrimination based on sexual orientation in the human rights code of the province of Quebec, the only province to have that ban. That resulted in a Supreme Court ruling in the province of Quebec two years ago forcing the Roman Catholic church in the city of Montreal to act against its conscience and against its teachings and rent facilities to a group advocating an immoral lifestyle by the teachings of the church.

I say again, it's that sort of militant fringe of the homosexual community that insisted on that which makes bad waves for the majority of the homosexual community, who are quite satisfied with the provisions of the Canadian Criminal Code in regard to their chosen lifestyle.

More recently, two clergymen in the province of Quebec were defrocked by their denominational leadership because of immorality, and that province has now ruled that they must be reinstated because the employer has no business discriminating against them because of their personal morality.

I say this to the committee members to just keep before you what Time magazine so wisely observed in an essay in their issue of January 8, 1979, on "Homosexuality: Acceptance or Toleration?" They observed the dangers of multiplying groups--other than legitimate visible minorities, for example--with special interest. They spoke specifically of the alcoholic who was suing the government to have him reinstated as a professor because he lost his job because he was drunk. He said, "I have been discriminated against because of my alcoholic orientation." Time magazine said, "Enough."

I think the committee should bear in mind, because there are some very strong, eloquent and persistent representations made to the committee in regard to the rights of such militant fringe groups, that there needs to be a great deal of thought given to the implications of this when you open up that Pandora's box.

In terms of government intrusion into religion, we are facing another very real problem on this which I think it is at least germane to know here. In the present proposed patriated constitution, which the government of Ontario supports, there is an opening statement that recognizes the supremacy of God in our society. But when we as a religious charity have spoken out, as we did last fall to a very urgent moral issue in public life in the city of Toronto relating to the municipal election, the result of that was to have Revenue Canada move on us to state their intention to revoke our status as a religious charity. The message seemed to be: "Keep your religion in the four walls of your building, and don't come out into public with it."

1 p.m.

I would suggest that John the Baptists may not be popular, and they may lose their heads because they take such public stands on public immorality, but surely we need some strong voices. And it should not simply be a knee-jerk, Socialist reaction. Some denominations have taken a straight, across-the-board policy of reacting to any public issue with a knee-jerk, left-wing reaction. That has never caused any problems with Revenue Canada, but it does cause a problem when it is a questioning of the appropriateness of a homosexual teacher to be in a public school classroom. And we are moved on for such things as that. I draw your attention to this simply because it is in the domain of this human rights bill.

Religion needs to be protected from a violation by the state of its distinctives and of its internal integrity. Comments have been made today and representations have been made in regard to hate literature. May I speak a word on behalf of Renaissance relating to hate literature which often is not perceived as such? Pornography, which demonstrates a hatred of women and degrades women, ought to be considered as needing some curbs on it as well as Ku Klux Klan literature. It happens that there is hate literature produced by the radical left as well as by the radical right.

There are many Ontarians who found it offensive that, while applauding the Attorney General of Ontario for speaking out in the Legislature about the Ku Klux Klan pushing their literature in the schools, for example, they did not hear anything from anyone in government when it was militant left-wing homosexuals pushing their literature and their lifestyle in the classroom. There is some hate literature there.

As a matter of fact, in the Body Politic case, an article "Men Loving Boys Loving Men," which apparently advocates paedophilia, a majority of Ontario residents perceived that as hate literature, but the chief magistrate of the city of Toronto at that time defended it openly, in the very week that it was before the courts, in the name of freedom of speech. Really, there needs to be some perception of where these mental processes can go if they are not curbed by a bit of sanity.

There is some hate literature that needs to be curbed, and we need to have a government, a government agency, the human rights bill and this committee which are concerned about those instances of hate literature too.

The rights of the unborn child in the province of Ontario: One looks in vain, as far as I can see, for protection of the rights of the unborn child in this human rights bill. At the same time, the province of Ontario has given pretty much a blanket endorsement to the federal government's patriation package, which includes a charter of rights that refuses to protect the most fundamental of human rights in this nation and in the province of Ontario: the right of a person to be born. I suggest that that is a human right that needs to be protected.



I thank you for your time at this late morning hour. I would welcome any questions, of course.

Mr. Chairman: Thank you very much, Mr. Campbell. Mr. Riddell, any questions?

Mr. Riddell: Yes. If you have been following the committee's deliberations, it will not come as any surprise to you that I share many of your concerns. I am one member of the committee who has spoken out on the inclusion of sexual orientation, and in my inadequate fashion I have tried to present the views which you put so eloquently.

I too am somewhat knowledgeable about the kind of education that young people receive in such schools as the Christian Reform school, one of which I have in my riding. It is interesting to observe the students who come out of that school and the loose-knit families and to observe the loyalty that those members of the family have to each other, to their church and to God, which I sometimes think is lacking in the public education system. But that is just my own personal view.

I notice that some of the committee members were very quick to challenge your comments on the responsibilities of trustees. I happen to agree with you, and I too was a former trustee, but it was after I got out of the line of work that I was connected with at that time and into politics that I became well aware of the situation in the school in my own riding where, in my opinion, and had I still been a trustee of the board, I would have fought to have the teacher discharged.

I talked to the trustees, who shared my opinion, but they said, "There is nothing we can do, because the teachers have one of the strongest unions that you will find anywhere, and to try to discharge that teacher for activities that took place outside the classroom, or outside his realm of work, means that you are going to go before the federation and probably get shot down."

I simply am not one member of the committee that is that quick to challenge your comments on what the responsibilities of trustees actually are.

I was most interested in your presentation and, as I say, I happen to share many of your concerns.

Reverend Campbell: Thank you.

Mr. Kennedy: Mr. Campbell, you mentioned, if I understood you right, and I would like clarification, that the present public school system institutionalizes our children?

Reverend Campbell: I quoted Dr. Laurier La Pierre--

Mr. Kennedy: His report?

Reverend Campbell: Yes. It was at the beginning of his study into the education of the young child that he was quoted as



saying: "The Ontario child is not a family child but an institutional child. It is not the school which is the extension of the home, but the home which is the extension of the school."

Mr. Kennedy: Do you feel that?

Reverend Campbell: I feel two or three things. I feel, number one, either Dr. La Pierre is stating his own political philosophy, which is quite compatible with a totalitarian state such as Russia or China, where you establish a government agency to care for the child even before birth--prenatal care even--and a community centre in which the child is raised so the parents are free to pursue their own lifestyle.

Mr. Kennedy: China formerly had that system. I do not know about now.

Reverend Campbell: Either Dr. La Pierre is stating his own political philosophy--and may I say that if one reads him and follows him, one knows that at least that is very close to his political philosophy--or he may be observing a fact that in the province of Ontario there is a common perception among parents in the province, and it is more a visceral thing than it is an articulated thing, that children are treated as wards of the state rather than as members of the family.

There are some positive sides of this that I could touch on. For example, we as parents came out of the closet to be authentic parents seven years ago, and we recognize that our children are as much our children from nine until four as they are from four until nine.

That meant when our daughter came home, saying, "I broke a floor-to-ceiling window today fooling around, and the principal told me I would only have to pay \$5," we were at first relieved until my conscience got to me about that; if it had been broken at home, it would not have been \$5.

I subsequently sent a blank cheque to the principal to cover the cost of that window to be compatible with our philosophy that parents are responsible for children from nine to four as well as from four to nine. I suggest to this committee, in passing, that there could be a resolution of one of the greatest and costliest problems right now facing governments at every level in Ontario, the problem of vandalism, if we would accept that view.

Mr. Kennedy: I simply do not believe that over the years since Ryerson, since our educational system started, we have been raising generations of institutionalized children. The church has been very much a part of our overall--

Reverend Campbell: Dr. La Pierre did not say that; he is saying now. May I suggest to you that if you were to immerse yourself, as some of us have in recent years, in what has been a subtle but revolutionary shift in the nature of public education in the province. You would find that Dr. La Pierre's comment may well have a lot more truth as a reflection of what has happened. It is a paternalistic thing which Mr. Davis seems to share with

r. Trudeau--a philosophy that sees government as something imposed on people rather than responding to people.

:10 p.m.

Mr. Kennedy: I would think it is more that parents are setting it go by default.

Reverend Campbell: I am here today to say it costs you plenty to resist that trend. By default means you have to take a lay and come down to a hearing such as this and find some place where you can express the anger and frustration of parents in as constructive and creative a way as there is still open to us in Ontario. Thank God this is still open to us, even though we do view with apprehension that strong tendency towards the paternalistic view of government as something imposed on people rather than responding to people.

Mr. Kennedy: By default is maybe not a good choice of words but I am thinking in terms of both parents working and so on. The school probably now has a greater role in the development of the child than formerly.

Reverend Campbell: But there is a tendency, as stated by someone in this chair this morning, for a government bureaucracy to encourage parental irresponsibility to keep itself busy. I am talking about a government agency such as the educational agency that says since there is a decline in enrolment, we have to keep the bodies occupied; let's find ways to multiply government intrusion into family sanctity.

Mr. Kennedy: We could philosophize and discuss that for many hours, Mr. Chairman. Thank you very much.

Mr. Riddell: I might just put a question to you that has been put to me when we get into an across-the-table discussion on sexual orientation. Surely my rights as a parent should not be taken away from me if I say I do not want my children to be taught by a homosexual because of my particular beliefs and what-have-you. Then they turn around and say, "I am a homosexual and I would prefer to have a homosexual teaching me, so where are my rights?"

Reverend Campbell: I would propose in response that should there be a reforming of the educational system compatible with the pluralistic nature of our society, it would be possible for both the homosexual teacher and parents who would want their child in an environment where there are openly homosexual teachers to get together in that kind of environment.

The thing which is offensive in a free society to any person with a liberal bent in his spirit is to have a government impose a certain value system, a certain morality, a certain religion, on the parents by legislation that forces a certain lifestyle, whether a swinging heterosexual or a homosexual lifestyle, on the children--people who are openly into that kind of lifestyle. Really the crux of the matter is imposition, a violation of the jurisdiction of parents. Every erosion of the family is an erosion



of freedom, because that is where the basic institution of a free society is.

Mr. Riddell: As you were making your comments on hate literature, I could not help but think back on the remark made by one of the first people to appear before the committee this morning when he was talking about the increase in crime rate and suicides and promiscuity and all the rest. When you think of the book stores or variety shops that you go into and see a whole shelf of magazines similar to Playboy and Playgirl and what not, it makes me wonder is there any reason we are seeing so much promiscuity when all the stuff is right there for any young person to pick up and read.

Reverend Campbell: A teacher in my hometown and a member of the teachers' federation phoned me two Saturday nights ago to say, "I am phoning you because I don't dare speak up myself." He knew that I might be bold enough to speak up or do something about it. This relates to the Ontario government changes in rating of movies.

He said: "At eight o'clock tonight the local theatre is showing the Rocky Horror Picture Show which is general admission. At 9:40 they are showing Alice in Wonderland which my wife and I went to see thinking as a mature married couple we would get some laughs from it and we weren't even amused. It is porn."

He said youngsters were going to be in there. I guess the Rocky Horror show requires minors to be accompanied by an adult. He said there is going to be an 18-year old boy with his 14-year old girlfriend in there at eight o'clock and he will be staying through for that straight porn stuff at 9:40.

He said, "This community insists that we teachers inculcate traditional values of our Judaeo-Christian heritage in the classroom here in town while they let that kind of hate material be released at the local theatre downtown." I again want to commend the restraint this government and the censorship board has shown on that type of hate material circulating in our society.

Mr. Chairman: Thank you very much, Mr. Campbell for taking the time to appear before us today.

Mr. Mawani.

Mr. Mawani: Mr. Chairman, members of the committee, I would like to make myself absolutely clear that the views expressed in this brief are the views of my wife and myself. I do not represent any ethnic, social or any professional organization or any employers.

It is very difficult for me to comment on Bill 7 in the half hour to 45 minutes allocated to me. However, I would appreciate it if some other time can be set aside for me to discuss this bill thoroughly as I strongly feel this bill is introduced to protect unqualified bureaucrats of the commission to hide their errors and harass the public unnecessarily.



What is the purpose of the human rights bill when the lawmakers and law enforcement officers, such as the Minister of Labour, the Honourable Mr. Elgie, and officers of the commission are the lawbreakers? They are violating the act by stating that bureaucrats of the commission are superhuman beings. They can hide their errors under the loophole of secrecy. There is nothing to stop the bureaucrats to write unauthentic biased remarks in the case file because they know it will not be accessible to the respondent or the complainant. Moreover, it is very easy to fool and cheat the bureaucrats of the commission.

Most of the time both the complainant and the respondent apply a cost-benefit analysis and figure out the cost of justice exceeds the benefit derived from the justice and therefore they give up the case. The commission feels they have done a great job, but in fact they themselves are trying to cheat. There are many government agencies and ministries which have wider powers of investigation than the black human rights commission--for example, the department of national revenue, the unemployment insurance commission and the police department. They give you a fair chance of hearing with the highest authority involved in decision-making. They also allow you to have access to your files.

Refer to exhibit No. 1 as an example. Read the last line. This is a letter written by the Unemployment Insurance Commission of Ontario and at the bottom of the line it says that (inaudible) should be careful because this information would be accessible to the employee.

1:20 p.m.

In the case of the human rights commission, this is not possible. The commission solely bases their decisions on the recommendations provided by the investigating officers. In other words, the commissioners are used as a scapegoat. The decision is made by the investigation officer and other unqualified, biased employees of the commission.

Let me cite some technical examples. Your family physician cannot solve your serious dental problem, and similarly, a dentist cannot repair the mechanical problem of your car. Similarly, you would not go to see your accountant for legal advice. Therefore the black bureaucrats of the commission cannot perform the function of catching accounting errors without any technical training or expertise in accounting or auditing.

Please refer to exhibit No. 2--the middle paragraph. I have specifically underlined, "Rather, evidence showed that errors in the complainant's work were serious enough to cause a job transfer, when her replacements performed more competently in the position." So, in this case, the commission has taken on the role of management consultant.

The commissioners are not there to act as consultants. They are not supposed to be the auditors. And yet (inaudible) on accounting errors. They have a nerve to say that the errors were

serious enough, but if you ask them the nature of the errors they say it is confidential.

What type of justice is this? After a lot of argument it was finally seen to be errors of an accounting nature.

To illustrate the above point with a particular example, let us suppose there were two cars involved in an accident. It does not necessarily mean that the occupants of the car who are injured seriously, or the driver of the car whose car is damaged most, is at fault. There are many factors to be taken into consideration.

In the above case, the white employer has tried to fool the black investigating officer by stating unauthentic accounting and auditing principles and providing the officer with forged photocopies of documents. The only way to prove this case as to who is to blame for these errors is to conduct an audit of the books. The commission is not qualified to do so. Moreover, the commission is not meant to. And moreover from the handful of errors presented to the commission, there is no way the commission can reach any conclusion on the materiality and quantity of errors without performing the audit.

Moreover, there are many technical accounting and auditing terms used in my wife's complaint to the commission--for example, "working papers," "audit reports," "internal control," et cetera. Mr. George Brown is here. Let me ask him the meaning of this term. He (inaudible) and yet he is giving this biased judgement. I am prepared to challenge the black investigating officers and the super commissioners to come before this committee and explain the significance and meaning of all the technical terms used, if they have bothered to review the case.

Refer to exhibits Nos. 3 and 4, in the middle of the last paragraph.

"With regard to the errors in her work, Mrs. Richards stated that although there was no particular face-to-face discussion of the appellant's general efficiency, errors which occurred from time to time were pointed out and discussed as they arose."

Look at exhibit No. 4: "Discussed with Tess her increase in errors and her continued lack of initiative or imagination." Now compare this statement to the statement given to the board of referees; that full complete statement.

The employer complained in writing to the commission. I repeat, the employer has confirmed in writing to the commission that the errors were discussed with my wife. Why weren't these errors brought to the attention of my wife? Why is the commission saying that these errors were confidential? Because they have made a serious mistake of performing (inaudible) function on the errors and they are not qualified to do so.

Lastly, there must be a format for rendering decisions, whereby such decisions will cover all the issues and facts involved. Moreover, there should be an appeal procedure. This appeal should be heard by a different authority who had not taken



part in the original decision process. In this act, the appeal is heard by the same officers who make the decision so we cannot accept any unbiased decision from the same officials who made the decision in the first place. This is a violation of basic human right; that a person is innocent until proven guilty. In order for the commission to prove my wife guilty of making errors, they should allow my wife to review the case thoroughly; moreover, they emphasize that there are certain restrictions imposed as to who can be present, the complainant or the respondent. Why should there be restrictions? Anybody should be able to be present.

The commission has got to (inaudible) with the employer. They are not the (inaudible) face-to-face meeting with the employer and the employee. Yet they come out with Bill 7 and all this garbage just to fool the public saying they are doing a great job.

I have the letter the minister's letter in front of me. (Inaudible) even the Minister of Labour my whole complaint. The Minister of Labour has not even bothered to review the letter. He's (inaudible). The Minister of Labour only took up this complaint when it was election time. The reason the Minister of Labour took this matter up at election time was because he wanted to sit in Parliament and because he took up the matter. At that time George Brown was there and I discussed this matter with him. When I pointed this out to George Brown that (inaudible) left the room and went to the washroom and never came back.

This is what the human rights is doing and you are here to pass this bill. When you are (inaudible) basic human rights you are not giving the complainant a chance to come before the commission to hear the case; and making unbiased decisions.

Because of this biased decision of the human rights commission my wife lost her unemployment insurance. Even the judge has ruled (inaudible) judgement which we appealed under the Unemployment Insurance Act whereby even the judges have allowed that it is unnecessary (inaudible). Somewhere in the judgement it says that in order for the commission or in order for the people to reach a judgement on the material (inaudible) the total public should be (inaudible) off the books and the unemployment insurance should have no power because it doesn't fall under the Unemployment Insurance Act; it falls under the act of the human rights commission.

This is what I wanted to say briefly and I will answer any questions you have.

Mr. Chairman: Are there any questions anyone wants to ask?

Mr. Brown: First, I would like to say that we have never met the complainant. Mr. Mawani has done all of the representation. Secondly, the case has been reviewed by the commission more than once. Thirdly, Mr. Mawani has been asked to take the case to the Ombudsman if he has any doubt as to the propriety of the investigation. I do not know if he has done so. That's all I want to say.



50

I think the question of audit of the respondent's book, Mr. Mawani has a certain philosophy of accounting orthodoxy which is at variance with that of the respondent. As a commission, we cannot ask the respondent to change his accounting procedure. They have indicated his wife was not even fired. The company did not fire your wife, Mr. Mawani.

1:30 p.m.

Mr. Mawani: I beg your pardon, would you repeat the last sentence? I did not catch it.

Mr. Brown: That is all I have to say, Mr. Chairman.

Mr. Chairman: We do not want to get into the specific case, sir.

Mr. Mawani: Mr. Chairman, I think you should give me a fair chance to reply to Mr. George Brown's comments.

Mr. Chairman: Providing it is relevant.

Mr. Mawani: I have a letter that I addressed to the human rights commission where I specifically stated that what the investigation officers, Mrs. Holt and Mrs. Sita were rushing the matter and were speaking very fast for a person like my representative to take down the details. What is the use of going to the commission when the investigating officers try to hide their mistakes? They try to speak so fast that I could not understand.

This is the letter I wrote to the commission and the commission did reply to that letter. Okay, certainly, the commission says the case was reviewed. In a review of the case, there are two sources of discussion. The commission stated its story, I stated my story. What I stated is not in the file. I repeat it's not in the file and I asked the commission to hear my statement of the story that I stated to the commission. Third, the employer has tried to fool the commission because the commission doesn't know anything about the accounting or auditing principles. They don't know anything about accounting, so the commission went to the white employer and the white employer tried to brainwash them. All the statements made by the employer cannot be true.

If the commission has got the benefit of the doubt they should change this judgement and say that due to the doubt we cannot process the case rather than saying that the weight of the evidence showed that--because of this letter I cannot take the employer to (inaudible) professional organization because if I do, she will show this letter to the professional organization. My case is lost.

If the commission had expressed a benefit of doubt saying that they felt they were unqualified because-- we cannot throw the scales between employer and employee. What the employer has done,

ne employer has forged--I repeat forged, f-o-r-g-e-d--forged errors. The commission cannot make out the difference between a forged document and a legal document.

It appears that the commission has got wide powers to seize any documents. It is very easy to fool the commission, I can give the commission a forged document. What is the commission going to do? I can make a forged statement saying that I--

Mr. Chairman: You have been through that part. Mr. Eaton, you had a question?

Mr. Eaton: I just have one question I wanted to direct to Mr. Brown. In a case where evidence is committed to you, such as bookkeeping evidence, and you felt it was necessary to have someone with expertise review that, you would have that power to use an accountant to look at it?

Mr. Brown: Yes, Mr. Eaton. Whether it is an accounting or an engineering proposition or--

Mr. Eaton: You could call in an engineer?

Mr. Brown: Where we feel that the evidence, as presented, merits that kind of thing. In this case we did not think so. It was merely a clerical function that was being performed and if the employer cannot determine error, I mean we cannot impose another standard of tests. It had nothing to do with the broader or more intricate issues involved in accounting.

I am afraid when it comes to the question of giving--what Mr. Mawani wanted was total access to the file so that he can carry on with other aspects of his determination. We are not in a position to do that.

Mr. Mawani: Mr. Chairman, I would like to ask Mr. Brown a question.

Mr. Chairman: No, because the question was asked by Mr. Eaton of Mr. Brown as to how it works. The one thing that Mr. Brown did indicate--and perhaps it is a question to you as far as how the human rights commission operates--is that there is in the government of Ontario appeal to the Ombudsman if anybody is dissatisfied with that. Are you taking that route?

Mr. Mawani: I do agree with the procedure that is there. You can only get the Ombudsman when you disagree with the human rights decision or when you are (inaudible).

Before I can decide whether a fair decision has been made by the commission or not, I am asking the commission to provide me in writing--because you see this case was reviewed by the investigating officer.

Mr. Chairman: Yes, but--

Mr. Mawani: Just listen to me. Be polite, please. Please.

Mr. Chairman: I think you have been through that. I am asking you if you have been to the Ombudsman.

Mr. Mawani: I am trying to say that I have been to the Ombudsman over the phone. I spoke several times over the phone.

Mr. Chairman: Okay.

Mr. Mawani: The Ombudsman says that you can only come to the office if you disagree with the decision. Now, in order for me to decide whether to agree with the decision or not I should have a full report. Because George Brown or whoever it is at the commission says there is no basic accounting or (inaudible) from the Ministry of Labour. They don't know how to write a report on accounting errors because the report that I requested is not confidential. Okay? That is what I say.

Mr. George Brown has stated before the House that he has got access to the accountants. Why can't we meet with the accountants and discuss it, and then we can have a sort of report?

I gave an example that you cannot go to a dentist if you have a stomach problem or you cannot go to a dentist for a car problem. Similarly, the human rights commission are not experts in accounting so how can they make a decision without consulting an accountant?

Mr. Chairman: Okay, sir, I think you have made your point.

Are there any other questions anyone has? If not, thank you, Mr. Mawani, for appearing before us.

This concludes the hearings of those we were to hear from. I believe I can state, as chairman of the committee, that to the best of my knowledge we have heard absolutely every individual and group that requested to come before this committee, and I think the clerk ought to be commended. It was not an easy job to fit everybody in. It was not only to hear those that wanted to be heard but when they wanted to be heard, and to try and juggle that certainly wasn't an easy job. So we thank you, Andrew, and your staff.

Clerk of the Committee: Yes. My staff's contribution should be acknowledged, Mr. Chairman, Mrs. Kaczynski and Miss Thomas upstairs in the office. They did a marvellous job.

Mr. Chairman: I think we all agree and can realize that it isn't all that easy. Also, Merike, who is not here now, but who provided information to us and the summaries and the cataloguing of the briefs.

I might add if there are any other requests of Merike we perhaps ought to make them, but I think we have given her pretty good direction, and I think the reports she has been providing and the Legislative Assembly has been providing have been of great benefit to us, as well.



Unless there is there anything else that I should be stating this time, I would certainly like to thank the--

Mr. Eaton: I think you have done an excellent job, Mr. airman.

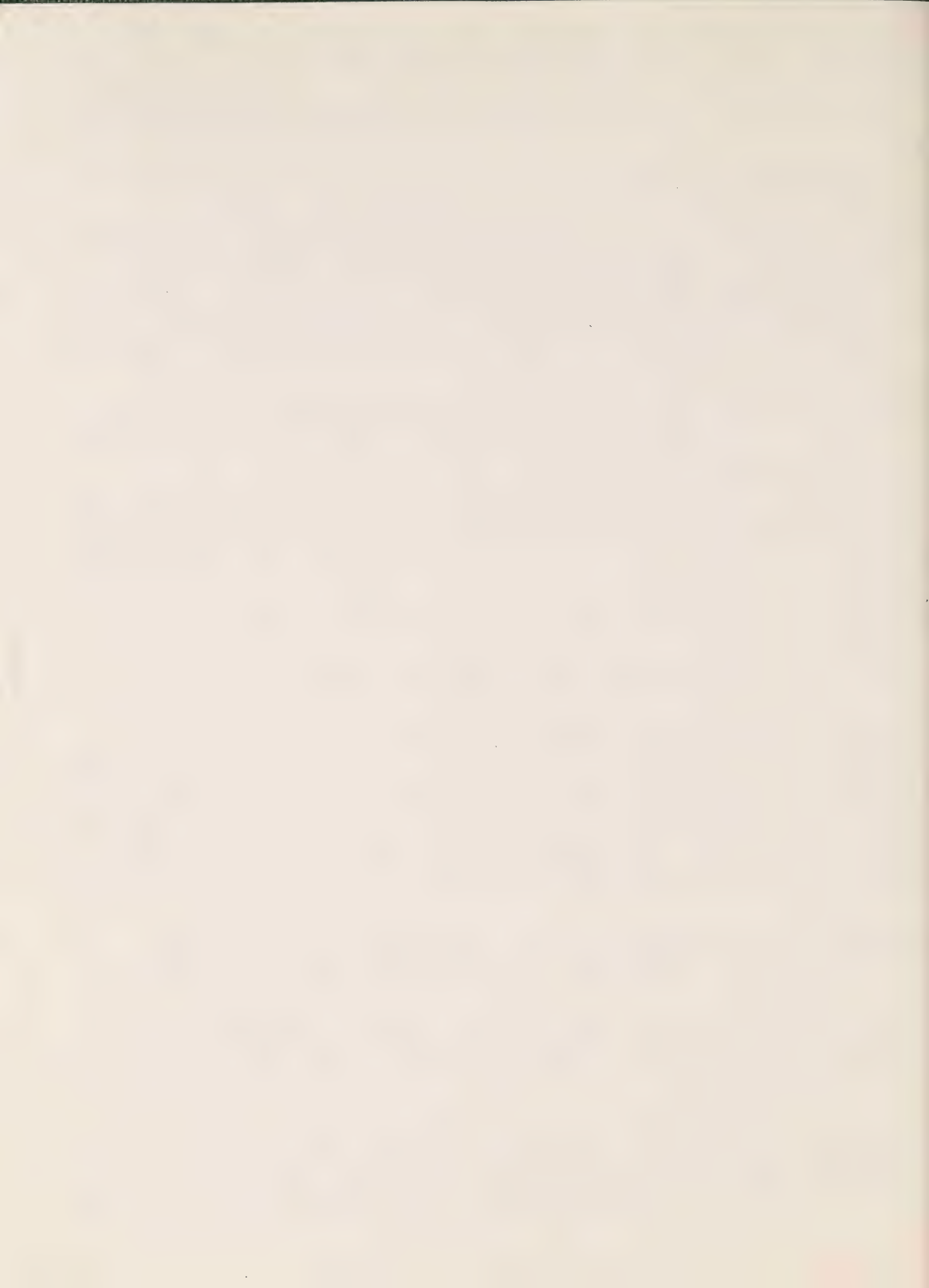
Mr. Chairman: We are all getting hungry, I know.

Interjections.

Mr. Brandt: I hope Hansard will acknowledge those taps.

Mr. Chairman: Thank you, gentlemen.

The committee adjourned at 1:39 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, OCTOBER 28, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
x Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
✓ Stokes, J. E. (Lake Nipigon NDP)

✓ Substitutions:

Johnston, R. F. (Scarborough West NDP) for Mr. Stokes  
Renwick, J. A. (Riverdale NDP) for Mr. Laughren  
Smith, S. L. (Hamilton West L) for Mr. Eakins

Clerk: Richardson, A.

Research Officer: Madisso, M.

Legislative Counsel: Stone, A. N.

✓ From the Ministry of Labour:

Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon. R. G., Minister  
Hess, P., Director, Legal Services



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, October 28, 1981

The committee met at 10:10 a.m. in room No. 228.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario:

Mr. Chairman: I will call the meeting to order and welcome everybody back on Bill 7. Mr. Smith.

Mr. Smith: Mr. Chairman, I do not want to hold up the proceedings at all because I am looking forward to hearing from the minister on Bill 7, a very important bill in the history of Ontario, but I would like to move a motion.

Mr. Chairman: Mr. Smith moves that, pursuant to the petitions tabled in the Legislature on Tuesday, October 27, 1981, requesting a referral to the standing committee on resources development of the annual report of the Minister of Agriculture and Food for the year ending March 31, 1981, and the annual report of the Ministry of Housing for the year ending March 31, 1980, that the same annual reports be brought before this committee for consideration as the next item of business following the deliberations on Bill 7 so that this committee may then conduct an inquiry concerning events surrounding an application to amend the official plan in the township of Vaughan.

Mr. Smith: I do not want in any way to hold up the matter of Bill 7, but I have moved that the next item of business following Bill 7 be the calling of these annual reports for such an investigation. The committee can order its own business of course; it is up to the committee. If there is general agreement, I need not speak to the motion, but if there is some disagreement I would be glad to speak to the motion.

Mr. J. M. Johnson: Dr. Smith, you can certainly appreciate the fact that there will be disagreement on it, so speak to it.

Mr. Riddell: You have become a different guy since you moved down to the front benches.

Mr. J. M. Johnson: Yes. The same thing applies to you.

Mr. Chairman: I was under the understanding that the House leaders were working on the agenda for this committee.

Mr. S. Smith: The House leaders do not order committee business. The committee orders its own business, Mr. Chairman.

Certainly the estimates can be referred to other committees. If it is the concern of members that the estimates should come next, after Bill 7, the estimates can certainly go to some other committee. There is enough opportunity for that.

Mr. Eaton: Mr. Chairman, if I might, I will speak to it. There is a heavy schedule of estimates for this committee. We have already referred one set of estimates from this committee to another one. The other committees have full schedules as well. We have just spent 20 hours on the Ministry of Agriculture and Food, and a couple of hours of that, or more, on Mr. Smith's pursuit of the Vaughan township review of rezoning. I do not think we should set aside the estimates of other ministries which are scheduled for this committee at this particular time. I would oppose that motion. We can reschedule it later when we are through with the other estimates and other bills that may be referred to this committee during this session. When we have completed that business, then we can get on with the referral which Mr. Smith is making.

Mr. S. Smith: Mr. Chairman, if I might just speak to my motion, then it will be up to you if you want to put it to a vote and for the committee to vote accordingly. As I say, I do not want to take up much time because Bill 7 is of great personal concern to me and I want to get on with it and I want to hear the minister. I will be brief.

Mr. Chairman, you were in the House when the matter was originally raised last spring. You will know that a matter which was sent to the Ontario Municipal Board by the Ministry of Housing was suddenly reconsidered mysteriously at the Ministry of Agriculture and Food by means of a method never before used by the Ministry of Agriculture and Food, namely, the sending out of a parliamentary assistant to look over agricultural lands to come up eventually with a decision about them contrary to that of the experts within the Ministry of Agriculture and Food.

The procedure was so odd and so bizarre that this would happen, once the matter had already been referred to the OMB, that you will recall questions were asked in the House as to what caused the Minister of Agriculture and Food to send his parliamentary assistant out to look at the land. At that time, Hansard will show very clearly that the minister said he was responding to a request from the Minister of Housing (Mr. Bennett) You will recall that Mr. Bennett agreed that he had asked for such clarification.

Unfortunately, for Mr. Bennett and Mr. Henderson, as you will recall, Mr. Chairman, we brought up the fact that when Mr. Bennett asked for this clarification, it was some eight months before Mr. Henderson became Minister of Agriculture and Food. Therefore, the story that such clarification was requested and led to the visit by the parliamentary assistant fell apart. Mr. Bennett claimed that once he had sent it to the OMB, which was long before Mr. Henderson became minister, he, Mr. Bennett, no longer requested any clarification. Therefore, he made no telephone calls to request such a visit.

You will remember that we asked the Minister of Agriculture and Food to search his memory and to tell us who requested he take this extraordinary measure. In response to what did he decide, out of a clear, blue sky, to do this? You will remember that the minister, at that time, said, "If it was not Mr. Bennett, it was certainly a phone call from Housing. He thought it was from Mr. Bennett, but it was a phone call from Housing."

We said, "Could it have been Mr. Hodgson?" He said he did not know, he was not sure, but it was a phone call from Housing. We said: "When you get a phone call from Housing, is there any record of these things? Do you make a note of them? Did you return the call? Did you talk to anybody? Did you discuss it with anybody in Housing? He said no, he had looked at his file. I quote from what he said at the time. He said, "My file begins with my letter to the minister. That is all. It is as simple as that." There was no other document apparently in the file.

We continued to ask who could have made the call. He continued to say he did not know. Mr. Hodgson then stood up and said that he had made a call and that perhaps the minister had sent out Mr. McNeil in response to Mr. Hodgson's call. You will know that Mr. Henderson continued, at that time, to be asked questions and could not quite clearly remember exactly what had happened.

10:20 a.m.

Last week in estimates we asked the minister again, "Who really caused you to go and send out Mr. McNeil?" Mr. Henderson said, "Well, it was because of a certain memo." He produced a memo which allegedly never existed before, a memo which he denied any knowledge of at the time we questioned him for three weeks in the House, a memo allegedly written by one Mary Smiley, his executive assistant.

According to Miss Smiley, who gave testimony, this memo, which is a very interesting memo, was purportedly written by her the very day or shortly after receiving a phone call from Mr. Hodgson. She said there was no doubt in her mind that it was Mr. Hodgson who called her. There was no question in her mind that that was who it was, according to what she said. She then claims that she wrote the memo and gave it to Mr. Henderson. Mr. Henderson, when asked why he would not have told us about this memo after three weeks of questioning in the House, had no explanation. When we said, "Why did you say your file started with the letter to the minister and nothing before then?" he said, "Well, this memo was not in my official file." Allegedly, there is some kind of difference between an official file and a nonofficial file, and this memo, which allegedly existed, was not present in his official file.

There is grave reason to believe, Mr. Chairman, that that memo never existed at all until it was concocted and brought into existence in order to create a story to cover the otherwise inexplicable action on the part of the minister. It is a very interesting memo, in which Miss Smiley takes it upon herself to recommend the sending out of Mr. McNeil.



Although he was briefed by Miss Smiley every single day during the three weeks of questioning in this House, the minister has not explained how it was that that she never took it upon herself to remind the minister and say: "Don't you remember it was Mr. Hodgson who called you? Don't you recall that? I wrote a memo about it." Never once during three weeks did she take it upon herself to tell the minister that. The minister told the House he had reviewed his file and read it over carefully during the last two weeks--those were his words. But never once did such a memo come to his attention, never once did Miss Smiley remind him of who it was who suggested Mr. McNeil go out.

The whole story is a fairy tale. It cannot in any way be believable. It has all the earmarks of a very serious attempt to mislead a committee of this House. The witness was not sworn when she gave her testimony and, therefore, may not be open to perjury charges, but the simple fact is that in my six years here I have never seen so amateurish and juvenile an effort to try to prevent us from learning what really did happen.

I believe that this committee ought to call people from the Ministry of Housing and people from the Ministry of Agriculture and Food and ought to examine the terrible conflicts between the testimony in the House last spring and the testimony given in estimates during this past week. I believe only then will we get to the bottom of what really sent Mr. Henderson on this peculiar mission to have his assistant try to re-examine lands in a matter that was already before the Ontario Municipal Board. We do not know what sent him out on that mission and the story we get is difficult for any rational person to believe.

It is extremely serious, Mr. Chairman. I have never seen what looks like so deliberate an effort to mislead the committee and the people as has happened in this one instance. We have to get to the bottom of it. After Bill 7, I do not believe there is anything else of importance equal to the Vaughan township matter.

Mr. R. F. Johnston: I have just a couple of comments on the motion. I know Mr. Eaton realizes that this is the hunting and fishing season.

Mr. J. M. Johnson: Witchhunt.

Mr. R. F. Johnston: This is definitely Liberal hunting and fishing season at the moment and they have not caught their quota on this one yet. I do not think we should try to impede the process of turning Vaughan township into a major Watergate. I think that this is an important move in the sordid history of Ronnie McNeil's, that land surveyor extraordinaire, adventures into Vaughan township. I think they do need further pursuit. I have no doubt about this at all.

It is so unclear now as to what else is on this committee's agenda, Mr. Chairman, that I agree with the Leader of the Opposition that it would be important to have this matter discussed after the Bill 7 hearings. But I also think it would be very important that at 10:25, or whatever we are at this morning, to get on to Bill 7 as quickly as possible because, no matter what they find out about Ronnie McNeil and Lorne Henderson, I do not

think it is going to be as important as what we are dealing with here in Bill 7. So I would like the vote to be taken as quickly as possible.

Mr. Chairman: Any further discussion?

Mr. Eaton: Mr. Chairman, I have a question on procedure here. Who are the voting members of the committee? Is Mr. Smith a member of this committee as a substitution?

Mr. Smith: Yes, I substituted for Mr. Eakins, in fact, unfortunately.

Mr. Chairman: It looks to me as if Mr. Renwick, Mr. Johnston and Mr. Smith are members. The clerk can correct me if I am wrong. Ms. Copps, you are still in, I think. I am trying to sort out the Liberals.

Motion negatived.

Mr. Chairman: The minister asked if he could be excused for one minute; he will be right back. Perhaps while we are waiting for him, I could say the time limit for Wednesdays is 12:30 p.m., if that is agreed, so that on Wednesdays we would not go beyond 12:30, including today.

Members of the committee, the minister would like to make a statement this morning and, with the concurrence of the committee, I would like to invite him to do so.

Hon. Mr. Elgie: It is always nice to be here, Mr. Johnston. Mr. Chairman, thank you and the committee for giving me the opportunity at the outset of these renewed hearings to make a statement to you. First of all, I wish to thank the committee for giving me the opportunity to make this statement in which I intend to outline the substance of various amendments to Bill 7 that I propose to introduce.

Before doing so, however, I would like to commend the committee for the way in which all members have performed the difficult yet essential task of receiving and assessing briefs from the public since you began your deliberations on June 2, 1981. As you know, I have attended as many of your sessions as possible. When I have not been here, my parliamentary assistant, the member for Sarnia (Mr. Brandt), has been in attendance and has participated in the process.

10:30 a.m.

I may say that I have been impressed by the fairness with which committee members treated all persons appearing before it and by the thoroughness of its questioning. As a direct result of the way in which you have performed your task, I think that Bill 7 in its final form will be significantly improved.

It is worth noting as well, Mr. Chairman, the considerable public interest occasioned by the bill, as evidenced by the number

and generally high quality of the briefs and submissions presented. Public input in legislation respecting human rights is particularly important. While it is obvious that not all viewpoints can be accommodated and reconciled, I believe that it is essential that all perspectives be carefully weighed and considered in an effort to arrive at a consensus, whenever one can be found, thereby increasing the acceptability of the legislation in the community at large--not, I submit, an irrelevant consideration in fashioning remedial social legislation of this sort.

None the less, the search for consensus cannot be at the expense of principles which are essential in the fight against discrimination, and I hope members will agree, as they peruse the changes that I am proposing, that the major themes of the bill remain unaltered.

To take but one example, the changes to the provisions dealing with the investigative powers of human rights officers, which I outlined in my statement of September 10, do not in my view materially weaken the mechanisms for conciliation and enforcement. On the other hand, they recognize more clearly perhaps the rights of those against whom accusations of discrimination are made. As a result, I believe that in this and in other areas what I am proposing today will result in a more balanced and equitable bill.

Finally, by way of introduction, I would like to confirm my commitment and that of the government to the enactment of Bill 7 as soon as is practicably possible. I say that in the full recognition that clause-by-clause debate may take some time, and I certainly have no desire to abridge or limit that debate. However, I believe that there is an expectation among the public that we will move ahead with the least possible delay.

Mr. Chairman, I have had the bill, incorporating my amendments, reprinted for the use of the committee. Material changes between Bill 7 and the reprinted bill have been underlined by my staff. I am advised by legislative counsel, who is here today, that there are many precedents for proceeding in this way, that is, with a reprinted bill. I hope that members will agree that it is more expeditious and less confusing to follow that course. The alternative is to move amendments piecemeal as we move through the clauses sequentially. While I am prepared to do that, I really do believe that using the reprinted bill, underlined and annotated in your copies, is preferable for all of us.

I would now like to turn briefly to the enforcement powers granted under part IV of the bill, which were the subject of my statement of September 10. It has been alleged in some quarters that the bill gives unprecedented powers to human rights officers, including the power to enter business premises without a warrant and the so-called power to search and seize, which, if exercised, could jeopardize the fundamental rights of those under investigation.



In my statement on September 10 I pointed out that the power to enter business premises without a warrant for the purpose of interviewing witnesses and examining the premises has existed essentially unaltered in Ontario human rights legislation for 30 years and, moreover, that similar powers exist in a multitude of federal and provincial statutes.

I also stated that I believe those who view the power to require the production of documents as tantamount to a search and seizure power are incorrect. Nevertheless, I indicated that it is imperative that there be no doubt as to the government's recognition of the rights of respondents as well as complainants. I am, therefore, proposing certain amendments to those sections of the bill dealing with investigations.

Under section 32 of the reprinted bill, or section 30 of Bill 7, human rights officers investigating complaints will retain the right to enter business premises. However, if entry is refused, it is proposed that the commission be empowered to either seek a warrant from a justice of the peace or to request the minister to appoint a board of inquiry, and I refer you to section 32(5) of the reprinted bill.

In order to make it clear that the investigating officer cannot compel the production of documents, I am proposing to change the language of the bill so the officer is authorized to request rather than to require the production of documents for inspection, and I refer you to section 32(3)(b) of the reprinted bill. The amendments also provide that a refusal to comply with an officer's request is not a contravention of the code--section 32(12) of the reprinted bill.

However, the commission is empowered, in cases of refusal to produce documents, to seek a warrant from a justice of the peace or, in the alternative, to request the appointment of a board of inquiry under section 32(6) of the reprinted bill. In the latter instance, the board of inquiry is given the power to require the production of documents and to adjourn the proceedings to permit them to be examined.

Concern has been expressed that the power of the investigating officer to exclude persons from being present at the questioning of witnesses may be construed so as to deny that person being questioned the right to have his or her counsel or other representative present during questioning. I am sympathetic to that concern, although I want to emphasize that it has never been the practice of the commission to do so and it was never the government's intention to deny the person being questioned the right to counsel.

On the other hand, the proper investigation of a complaint might well be impeded if the investigating officer could not exclude from interviews persons adverse in interest to the complainant. I am, therefore, proposing an amendment to the bill, specifically affirming the right of a person being questioned to have counsel or a personal representative present during questioning and limiting the investigating officer's right to exclude from the interview only persons adverse in interest to the complainant.

As members know, Bill 7 gives human rights officers the power to call upon a police officer to assist in the investigation of a complaint. This provision has been perceived by some as adding a criminal taint to what is essentially a conciliatory procedure. In view of the other changes to which I have referred, which enable the commission to handle obstruction in other ways, and because I am anxious to preserve the conciliatory character of the investigative procedure and to avoid any perceptions or misperceptions of criminality, I propose to delete that provision.

The final matter which I dealt with in my September 10 statement is the concern that the free expression of opinion may be abridged or denied by section 12 of the bill, which was designed to prohibit dissemination of discriminatory material. The concerns expressed were twofold: first, that the scope of section 12 was unduly broad and that in referring, inter alia, to "any matter or statement" it might, read together with the extended definition of dissemination, prohibit the free expression of views on controversial issues of public concern related to human rights. This apprehension was fortified, I gather, by the fact that Bill 7, unlike the current code, did not state specifically that the right to free expression of opinion was preserved.

Accordingly, I am proposing an altered version of section 12 which, as it is in the present code, is limited to the publication of notices, signs, symbols or other representations that indicate an intention to contravene or to incite others to contravene the code. In addition, it is now provided under the amended section 12 that the prohibition contained in the section shall not interfere with the freedom of expression of opinion.

Turning now to several other issues which have arisen during the presentation of public submissions to the committee, I would like to address the concern that has been expressed that Bill 7 might prohibit well-established and justifiable employment practices which either prohibit nepotism or recognize it.

The problem arises from the inclusion of marital status and family status as prohibited grounds of discrimination in employment. The intention in including those added grounds was to provide protection from discrimination because of a generalized status and not because of a particular relationship to another individual. In other words, while it is desirable to protect, for example, women with children from discrimination in employment solely on the basis of their family status, it was not intended to interfere with the rights of employers to either prefer or exclude persons having a particular family or marital relationship with either the employer or other employees. Such rules, somewhat pejoratively referred to as nepotism and antinepotism rules, are not uncommon in municipalities and in certain industrial and commercial enterprises.

It is, therefore, proposed to amend the bill to make it clear that provisions concerning the prohibition of discrimination on the basis of marital or family status are not intended to operate so as to interfere with these practices. I believe that the new section has been drafted so as to prevent such practices being used to conceal a discriminatory intent.

The question of the scope of protection against discrimination because of age has been the subject of considerable discussion during the committee hearings. The principal reason for not changing the upper limit of age protection from 65 to 70 or beyond is the uncertain effect such a change might have on prevailing employment practices, both at the level of particular establishments and in terms of the impact on the provincial labour force generally.

Those who oppose what has come to be known as a mandatory retirement age argue that it is unfair to require retirement at age 65 because such a practice ignores workers' needs, capabilities and preferences. Those in favour of retirement at age 65 argue that it permits older workers to retire, without a judgement having to be made about their ability to continue to perform work adequately. Mandatory retirement provisions also allow for efficient personnel planning and increased job opportunities and promotional prospects for younger workers.

The arguments against raising, or even eliminating, the upper age limit in employment, however, do not provide a rationale for not protecting persons from discrimination after age 65 in other areas covered by the code, for example, accommodation and services. I am, therefore, proposing to eliminate the upper limit of age protection in all areas except employment.

As to the upper age limit in employment, while there have been a number of studies which illuminate some aspects of the problem, I am not persuaded that there has yet been a comprehensive study of the specific implications for Ontario and Ontario workers and employers. I have, therefore, asked the Ontario Manpower Commission to undertake a detailed examination of this problem in the context of the demographic composition of Ontario's work force and employment practices in this province and to make recommendations as to what legislative protection, if any, might be extended to persons over age 65 in employment.

Under Bill 7 it is a contravention of the code to require citizenship as an employment qualification. I refer you to section 4. Section 15 of the bill provides an exemption for situations where Canadian citizenship is imposed or authorized by law, or where Canadian citizenship or lawful admission to Canada for a permanent residence is a requirement adopted for fostering participation in cultural, educational, trade union or athletic activities by Canadians or landed immigrants.

However, it has been argued by some that employers should be permitted in recruiting practices for senior executive positions, to give preference to candidates who are Canadian citizens or persons domiciled in Canada who have the intention of obtaining Canadian citizenship. I am proposing an amendment to the bill to permit such employment policies, and I direct the attention of committee members to the provisions of section 15(3) in the reprinted bill.

There has been some criticism and I think confusion about the provisions with respect to harassment on the ground of sex, section 2(2) and section 4(2) of the present Bill 7, and with regard to the persistent solicitation by persons in authority,



section 6 of Bill 7. That confusion arises, I believe, in part because of the separation of these sections. In addition, some have found the meaning of the terms "persons in authority" and "harassment" to be unclear. The term "persistent" in the sexual solicitation section has been criticized by some as constituting, perhaps inadvertently, a licence or invitation to engage with impunity in a single incident of sexual solicitation that is already known to be unwelcome.

To address these problems, amendments in the reprinted bill do as follows: one, they consolidate the provisions with respect to harassment on the grounds of sex in employment and accommodation and the provisions with respect to sexual solicitation by a person in authority into a single section, 6; secondly, they replace the general term "persons in authority" with the more specific term "person in a position to confer, grant or deny a benefit or advancement", and I refer you to the new section 6(3)(a).

Thirdly, I propose to delete the word "persistent" in the section prohibiting sexual solicitation and, fourthly, to amend the definition of harassment so that it too is a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome, and I refer you to section 9(g).

The issue of sex discrimination in sports activities is a particularly difficult one. As committee members know, there has been some jurisprudence on the issue. In one case, a board of inquiry held that discrimination on the ground of sex contrary to the current Human Rights Code had occurred where a young girl was denied the right to participate in a boys' softball tournament. This ruling was reversed in the Divisional Court and the Court of Appeal and leave to appeal was refused by the Supreme Court of Canada.

From letters I have received, and I am sure that many of you have, I know that there are strong feelings on both sides of this issue. Some argue that, regardless of the merits, the establishment of single-sex sports activities ought not to be governed by the provisions of the Human Rights Code. Others feel equally strongly that it is, in fact, a human rights issue. In view of those opposing positions, and because of the difficult and somewhat complex considerations surrounding the issue, and I speak of physiological as well as social and historical factors, I have concluded that further study is required.

Within the next few days, I hope to announce the names of the members of a task force which will be set up to inquire into the matter and report to me. Pending receipt of the task force's report, I am of the view that it should be made clear in the bill that the establishment of the single-sex sports activities is not a contravention of the code. The relevant section in the reprinted bill is section 19(2).

The issue of liability of employers for acts of discrimination committed by their employees, section 42 of Bill 7, has received considerable attention during your hearings. In particular, it has been alleged that the section, as it is now

worded, may be interpreted so broadly as to make employers liable for all acts of discrimination perpetrated by their employees, whether or not the offending employee is acting in the course of his or her employment. The intention of the provision, as I am sure most of you know, was to codify the well-established common law doctrine of vicarious liability. To clarify this intent, I am proposing to amend the bill to make it clear that such liability is limited to those situations where the employee acted in the course of his or her employment, and I refer you to section 44(1) of the reprinted bill.

Members will also note that a new subsection has been added to section 44 of the reprinted bill enabling a respondent to request a board of inquiry to indicate in its decision as to whether or not the act of discrimination complained of was done with or without the authority or acquiescence of the corporate or other respondent. This seems to me to be a fair proposal. If a corporation or a trade union, for example, is to be made vicariously responsible in law for the discriminatory acts of its employees while acting in the course of their employment, those institutions should, in our view, at least have the right to show that, despite their legal liability, they did not acquiesce in the illegal conduct. The relevant section in the reprinted bill is section 44(2).

I am also proposing to exempt the harassment provisions from the vicarious liability provisions of the same section. Provisions for liability are already present in section 40(4) of the reprinted bill and were in the previous section 38(4) of Bill 7. In order to avoid any question of double jeopardy, I wish to put the matter beyond doubt. I am, therefore, proposing amendments to section 42 of Bill 7 to remove reference to the harassment provisions.

I am also proposing to clarify section 38(4) of Bill 7. Members will recall that section empowers a board of inquiry to direct a landlord or employer, who has been added as a party to a complaint of harassment by a tenant or an employee against a fellow tenant or fellow employee, to take whatever steps are reasonably available to rectify the situation, should the conduct complained of be found by a board of inquiry to have continued or recurred.

The amended section, section 40(4) of the reprinted bill, makes it clear that the original board will remain seized of the matter and that at the instigation of the commission may reconvene and make the appropriate specific order against the landlord or employer, as the case may be, in the appropriate circumstances; that is, where on that second occasion once again he or she knew or ought to have known of the repetition and had the authority by reasonably available means to prevent the continuation but failed to use that authority.

It has been argued before the committee by some that hearings before boards of inquiry are weighted in favour of the complainant. It was pointed out that the person against whom the complaint is made must pay for his or her own counsel and must comply with the remedial orders of the board of inquiry which, in some cases, might involve substantial monetary payments if he or she is found to have contravened the code.

10:50 a.m.

On the other hand, in the event that the complaint is dismissed, the respondent is not entitled to any compensation for costs incurred. I think it is important that a human rights statute be seen to treat all parties to its proceedings fairly. To further this objective and, I might add, to reinforce the commission's responsibilities under section 31(1)(b) of Bill 7 or 33(1)(b) of the reprinted bill, that is, the power to dismiss complaints that are frivolous, vexatious or made in bad faith, I am proposing to empower boards of inquiry to award costs to respondent where the complaint is dismissed because it was trivial, frivolous, vexatious or made in bad faith, or, alternatively, where undue hardship was caused to the respondent in defending himself. The new section incorporating the power to award costs is section 40(6). I am also proposing to reduce the maximum amount which can be awarded as damages for mental anguish from \$15,000 to \$10,000, an amount which I believe is more in keeping with prevailing awards.

Mr. Chairman, in addition to the issues I have outlined, there are a number of others which are either of a housekeeping or technical nature, which members will find marked in the copies of the reprinted bill distributed this morning. Among the changes to which I would draw your attention are the following.

The wording of the preamble is slightly altered to accord more precisely with the wording of the United Nations Universal Declaration of Human Rights.

Section 17 of Bill 7, or section 18(1) of the reprinted bill, relating to separate schools has been revised so that it contains the language of section 93 of the British North America Act and section 1(4) of the Education Act. This revision reflects the concerns expressed by the separate school boards that their historical rights and privileges under those two acts extended to more than creed.

Concern was also expressed that since Bill 7 had primacy over all other legislation, its effect would have been to nullify the provisions of the Education Act respecting the duties of teachers. This was not the intention of the government, and to make this clear, section 18(2) of the reprinted bill states that the act does not affect those provisions respecting the duties of teachers as outlined in section 235(1) of the Education Act.

Section 13 of Bill 7, which deals with findings of discrimination when mixed motives are present, has been deleted from the reprinted bill. On further consideration, I deem it advisable, where there is evidence of mixed motives, to leave the adjudication of the effect of mixed motives to continue to be dealt with, as it has been in the past, through existing or developing jurisprudence, by boards of inquiry and by the courts.

The permissible content of application for employment forms has been a matter of considerable comment, and I have concluded that further clarification is desirable. Members will note that in



section 22 of the reprinted bill it is made clear that information as to a prohibited ground of discrimination cannot be sought on application forms. This is to prevent the screening of job applicants on any basis other than genuine job-related requirements and their own qualifications. This new section makes it clear that questions concerning all prohibited grounds of discrimination in employment for which bona fide and reasonable exceptions are explicitly provided--for example, age, sex, marital status, handicap and record of offences--can be asked during an employment interview.

It is proposed to reword section 26(c) of Bill 7, dealing with the function of the commission, to make it clear that the commission has the power to recommend special programs for consideration, but not to impose them. This represents no change in principle, but is simply a clarification and, I may say, emphasizes that it in no sense is considered as an order.

Finally, section 38 of Bill 7, which is now section 40 of the reprinted bill, has been clarified particularly in relation to the powers of a board of inquiry dealing with allegations of discrimination on the ground of handicap. The clarification reinforces the principle which I have expressed throughout the discussions of the bill and in the Legislature, namely, that it is only where a board of inquiry has made a prior finding of discrimination on the ground of handicap that it may proceed to inquire if physical access is obstructed or if there is a lack of amenities. In such cases, remedial orders may be made, but subject to considerations of undue hardship.

Mr. Chairman, as I have said, I am grateful for the opportunity to present these proposed changes to the committee this morning. I hope and I believe that when we conclude clause-by-clause consideration of the legislation, we will have one of the best human rights acts of any jurisdiction.

Mr. Chairman: Thank you, Mr. Minister. In the minister's statement, he has pointed out several changes and also made a request that for the ease of the committee we may be able to work as a committee from this reprinted version of the bill. I wonder if there are any questions or comments on the minister's statement.

Mr. Riddell: This is in lieu of the minister's presenting amendments, is it?

Hon. Mr. Elgie: As I mentioned, I am quite prepared to do it either way. It was just our view that since many sections have been moved around--for instance, the application form section has been moved around so that they are all side by side--I think it makes for easier consideration of the matters if we consider the restructured bill. But, as I say, I am in the hands of the committee on that.

Mr. Riddell: It could well be that some of the committee members want to amend an amendment which we will not have in a written form. I just do not know how we can go about amending an amendment under the normal procedures, as compared to trying to amend an amendment that we have not got, but which is implicit in the redrafted bill.

Hon. Mr. Elgie: If I may comment on that, if you look at the reprinted bill I have proposed to you, you will note that I have had the staff annotate it on the right-hand side to indicate the section it is comparable to in Bill 7. If members do have an amendment they wish to propose, they simply have to convert that number to the number in the reprinted bill. Again, I am in your hands, and I mean that quite sincerely.

Mr. Riddell: I am just saying that there will likely be amendments from other members of the committee.

Hon. Mr. Elgie: Sure. I am just saying that the numbers are there and you can make the changes in your amendments.

Mr. Riddell: Okay.

Mr. Renwick: There are two things, Mr. Chairman. Speaking to the minister's statement in its initial instance, I think it is quite a mouthful. There is no doubt whatsoever that each of us saw in the amendments which were outlined by the minister some matters with which we agreed, some with which we disagreed and some on which we have very real questions. I am always curious about so-called housekeeping amendments which many times have more time bombs in them than anything else. First of all, we are going to have to have time to consider in depth what the minister has said. I am almost constrained to move a recess on that question at an appropriate time.

The second matter is about the procedure. I recognize the point which the minister made, but here we have a public bill, to which we have devoted immense amount of attention and with which members of the public have been dealing and have presented their briefs in relation to. We have an immense amount of background material which relates each of the presentations to each section of the bill. To now add a further mathematical calculation for each of us to make, when we consider that this cross-referencing indicates that section 1 of the bill has cross references to at least about 20 sections of the bill, to now ask us to make a further translation of that into a different process would be confusing to the committee and certainly confusing to any members of the public who want to follow what we are doing.

The other matter is that the proceedings of this committee on this bill are being recorded, as I understand it, and it would be helpful in the future if each of the amendments was made at an appropriate time when we come to that section of the bill, not only for the reason that Mr. Riddell has given, but so that the record will clearly show the discussion which has taken place with respect to that change. If we were to adopt the minister's process, then that kind of discussion would not be clearly seen to take place.

11 a.m.

In the long run, while I recognize the proposal the minister has made, we would be best to adhere to our usual process of dealing with the bill which has been before the committee. I would, therefore, ask that we not make the change of using the

reprinted bill, but use the original bill and ask the ministry to make its appropriate motion at the appropriate time and then we can deal with it on that basis.

Ms. Copps: To back up the comments made by my colleague Mr. Riddell and also Mr. Renwick, we have been dealing with the substance of Bill 7 as previously tabled for some four or five months. We have dealt with 150-odd briefs from communities. I find it highly unreasonable that I should be expected to proceed with an amended version which I received at approximately 8:30 or nine o'clock this morning. If we are truly concerned about getting to the meat of the bill in the areas that need amending and do not need amending, we will have to discuss them on an individual basis. There are certainly some amendments, as proposed, which are laudable and there are others which are highly questionable. In order to be fair to the people who have appeared before the committee to make presentations and also to be fair to the public, which is already confused enough about this bill, we should stick to the original bill and go through it clause by clause.

Mr. Chairman: Certainly there is no question but that we will go through it clause by clause.

Ms. Copps: The original version, not the amended version?

Mr. Chairman: Yes. Is there any other discussion?

Mr. R. F. Johnston: Are we dealing with the matter of procedure first? Is there consensus on that in the committee that we will use the original bill and just use this as a backup to have some idea of how things are going? The secondary matter about the content of the minister's statement is something else again.

Mr. Chairman: All right. We seem to be on the procedure. Let us try to straighten that out.

Hon. Mr. Elgie: If there are no other comments, Mr. Chairman, we are in the hands of the committee. We really had it reprinted in this form for the convenience of the committee, but if there are views to the contrary that it is more reasonable to proceed on an amended clause-by-clause approach, we are in your hands about that.

Mr. R. F. Johnston: It is still a useful reference point.

Hon. Mr. Elgie: Yes. We will have to spend some time to get those things ready. At least in this bill, you will know what we will be saying.

Mr. Riddell: It is such an important bill that I think we should follow normal procedure in dealing with the amendments.

Hon. Mr. Elgie: I would not want the impression left that this is an abnormal procedure because Mr. Stone, the legislative counsel, will tell you that this is a very common procedure. So let us not leave that impression. But, as I say, I am in the hands of the committee.



Mr. Eaton: I was just going to comment on what the minister said. Many times when we have had a bill where, after consideration by the committee, there appears to be a lot of amendments, the ministry has reprinted it with the amendments in it and we have dealt with it. I am not arguing that we should proceed that way. If the committee members feel more comfortable in going clause by clause, then we can move the amendments as we come to each clause in the old bill and use this as a reference to follow it. But it is not an unusual move at all by the minister.

Hon. Mr. Elgie: With Bill 70 we did that too.

Mr. Chairman: You will have no difficulty?

Hon. Mr. Elgie: No. I will have no difficulty. As I said, my staff will have to go through it and get those amendments in order for presentation.

Mr. Chairman: Is it agreed then that procedurally we will work from the original Bill 7 when we start to go through it clause by clause?

Agreed to.

Mr. R. F. Johnston: On the minister's statement and in response to it, I would say there are a number of areas in which we welcome the changes, some which had been anticipated in terms of his previous statement and some which were totally unanticipated. I refer specifically in that case to the changes in terms of sexual harassment. I had no indication that there would be a change in terms of the removal of the persistency and that side of things. I welcome those changes.

However, I think I am up to approximately 30 amendments myself, most of which do not seem to have been touched by the minister in his statement. I concur with what my colleague Mr. Renwick was saying. Given the vast extent of the changes, something which I think most of us were not expecting from the minister but were expecting we were going to have to move mostly ourselves, I think we really do need some time to digest what we have received this morning and to be able to make our response and start to go through this on a clause-by-clause basis.

I would suggest that we recess. I am in the hands of the other members of the committee in terms of what they feel is useful.

Hon. Mr. Elgie: Just till tomorrow.

Mr. R. F. Johnston: Just till tomorrow.

Mr. Smith: We could proceed on the the Vaughan lands matter now if you would like.

Mr. R. F. Johnston: You can make that motion if you would like.

Mr. Chairman: There may be other discussion. Is tomorrow night a unreasonable time? Mr. Minister, you would also have to have these amendments.

Mr. Renwick: Tomorrow night we could always deal with the Vaughan township matter.

Hon. Mr. Elgie: Let me say, Mr. Chairman, if I may interject, that counsel does advise me that we do have amendments prepared with respect to the preamble. I think there is general understanding the preamble should not give us any problem. We could start there and I could introduce the amendment as it is outlined. That is not a major thing.

Mr. R. F. Johnston: Sure, and I have a couple of amendments to the preamble too.

Hon. Mr. Elgie: I have not had the privilege of seeing yours yet.

Mr. Chairman: I was going to get to the preamble. If the committee feels the preamble may take up some time, we could perhaps go into it.

Mr. Renwick: When we start we have to know exactly where we are going. I am certain there are a large number of people who will be interested in what the minister has said in these specific amendments. They broadly affect a large number of the representations which were made to us on particular issues.

I am not counselling delay, but what I am saying is that our thought originally was that we would hear all of the presentations to the committee from the public. We would then, within very broad limits, restrict the discussion on the bill to the members of the committee as we went through each of the clauses. I am, therefore, going to ask that while we adopt that as the general principle we proceed with, if in any particular clause of the bill where there have been amendments there are people who have taken the trouble to come again before the committee to speak to the particular section because of the amendment, we should have sufficient flexibility to let that occur because of the implications of a number of the amendments. I am not asking that it be a wide-open discussion of any kind.

As for commencing our discussion this morning, if it were restricted solely to the preamble, I do not see any particular problem. My own personal preference would be to recess to have an opportunity to relate what I am trying to relate from the minister's statement to what we have heard during the course of the hearings, but if we want to begin on the preamble of the bill, that would be fine, but not to proceed any further this morning.

Ms. Copps: Since the precedent has been set in making a comment on the minister's statement, although I am not sure that the minister's statement will hold up in a court of law, I would also like to make some comments. First, I see some positive aspects to the changes in the legislation. But one of the most difficult and I think regressive areas that I see in the proposed changes, and what really outlines some of the fears I have had from the very beginning, is the position the minister states on page 24 with respect to the handicapped. This was supposedly one of the reasons that this bill was brought into being. It was going to change the employment situation for the handicapped people in this province.

The minister states once again what is very clearly a suspicion I had from the beginning, namely, that there will be no situation where a handicapped person can have access to employment unless and until "a board of inquiry has made a prior finding of discrimination." This is putting the handicapped people of our province in a catch-22 situation. It really illustrates one of the basic weaknesses in the bill. If the bill was introduced in an effort, among other things, to clear up the problems facing the unemployed handicapped in our province, it certainly does not respond to that.

That would be an analysis from a very quick perusal of the bill. I would support Mr. Renwick's contention that we should adjourn in an effort to have a chance to go over each amendment on an individual basis.

Mr. Stevenson: I would comment on a couple of things. I personally do not see any problem with going ahead with the preamble this morning. If it is the wish of the committee, we can deal with that. I believe it was Mr. Renwick's suggestion that we allow individual or groups to appear again before the committee on particular aspects of amendments. Did I understand that right?

Mr. Renwick: I will clarify in a specific instance. Say we come to a particular clause in the bill where the minister has moved a particular amendment of substance and it needs clarification; then if anyone comes before us and requests that he or she would like to participate in that discussion, I sense that we should consider that request very seriously and permit the person to appear and enter into the discussion of it. I am not asking again for further briefs on the matter, but I am asking for the assistance of members of the public who have special interests in very special sections of the bill and where these interests are now being affected by the minister's amendment.

I emphasize again that it is simply as a procedural matter we not tie ourselves to a rigid procedure with respect to some matters of importance. For example, it would be extremely important when we come to the matters related to handicapped persons, and there are many other instances, where there are some amendments that do affect the matter, that we should have the benefit of the capable advice which we have received so far from the coalition of handicapped people, if they request to intervene in that discussion. It is within that rather limited but flexible framework that I would like us to proceed.

Mr. Stevenson: Personally, my position would be that we have had the input from these groups and we have had the opportunity to question them and to get a very clear understanding of what their position is. At the moment at least, I would be opposed to that sort of move. If we, as individuals, wish to seek the advice of any of those groups, we can do so certainly as a group or individually. It seems to me that that would be adequate. I am not sure that we need to have further input at the time of discussion on a clause-by-clause basis. Unless I get someone who could change my mind on it, I would be opposed to that sort of procedure.



Mr. Chairman: Everybody has asked to speak. Since it appears that we might have a little time, let's allow everybody to speak so that when we do get started we will know where we are going.

Mr. Riddell: It is certainly not uncommon, as we do a clause-by-clause review, to have more input into the bill from the public who are concerned. I have sat on a good many committees where we have dealt with very important bills. If there is some particular section that is of some major concern to the general public, then they should be given a chance to be heard. We have to limit debate. It is not a case that we are going to listen to a lengthy presentation once again. But if they have a point they want to make, we should listen to them. As I have said, it is not an uncommon procedure. It is done many times.

I would concur with the comments that have been made that we should recess to give us a chance to digest the minister's statement. What is the customary procedure? Do all the parties who are wanting to make amendments submit those amendments to all members of the committee, whereby we shall have a chance to study them, to have some idea of what amendments they are going to make, so that we shall be better prepared in committee to deal with those amendments? If that is the case, it simply reinforces the suggestion that we recess and let the parties get their amendments put together and submit these amendments to the clerk who, in turn, will see that all of the members of the committee get these amendments. Is that the normal practice?

Mr. Chairman: I do not know what the normal practice is. I think it would be easier.

Interjections.

Mr. Eaton: In courtesy, sometimes people have decided on an amendment part way through and just prepared it at that time.

Mr. Chairman: Mr. Stone, do you want to comment on this?

Mr. Stone: Mr. Chairman, maybe Mr. Richardson can correct me if I am wrong, but I think the rule is that amendments to be moved in committee need to be given on two hours' notice before the meeting. As I understand it, the notice is given by depositing it with the House leaders. It would certainly be of great assistance, with the numerous amendments, if there were more than that and they were distributed in writing well ahead so people could organize what was going to happen.

Mr. Riddell: I am sure when we did the Occupational Health and Safety Act we had a copy of all the amendments from all three parties and we were able to sail right ahead with that bill. If you just get an amendment all of a sudden and it takes some time to digest the intent of that amendment, then it slows down the process. I was just wondering if maybe it would be a good idea if we had a copy of all those amendments before we got into a clause-by-clause discussion of the bill.

Mr. R. F. Johnston: If it is a matter of amendments only, I have four amendments at present with the clerk that are just strictly on the preamble and the first clause, and I would not mind at all if they are distributed at this point. It will be difficult for us to get them all in well in advance, but I would like to try to get mine in the day before we deal with them as we go clause by clause, so people will have a chance to look at them. I shall follow that practice as far as my amendments are concerned.

Hon. Mr. Elgie: A day ahead.

Mr. R. F. Johnston: A day ahead we shall try to get them in, so that at least people have a chance to look at them and they get a chance to be circulated.

Mr. Eaton: In regard to what is being suggested as to the amendments, I think it has been a common courtesy that when people know that they are going to move an amendment, copies are prepared and tabled with the members. But I doubt if there is any rule that says they have to be in two hours ahead because sometimes, as a result of the questions and the discussion that take place, we form an amendment right in the committee, and that is written out and moved in the committee. I question this bit about it. But it would certainly be advantageous for all members to have as many of the proposed amendments they know they are going to make before us ahead of time, so that we can discuss them and be prepared for some comment on them if we wish.

The other point on people appearing before the committee on a clause-by-clause discussion is that we have had people make comments on a particular clause, but I think we have to be a little careful that we do not accept a kind of presentation on each clause. It is not just a matter of the minister having tabled his amendments, but somebody may be proposing amendments as we go along, and we could have a continual procession of people coming before the committee on a particular clause. I think that has to be limited a little bit.

11:20 a.m.

Mr. Lane: Mr. Chairman, I still have some concern about hearing from the public at this time. We have spent a tremendous amount of time hearing briefs from all across the province in some detail. It seems to me that although certain people find it convenient to be here and take part in the discussion, other people are shut away from that opportunity because they are somewhat removed from this place where we are holding the sessions.

It would be unfair for some people to come in and say, "Well, I have a great concern here and I want to say something about it." Somebody from North Bay or somewhere else has just as great a concern but is not here. If we advise people they can come and do that kind of thing, I think we shall be hearing until the snow goes next spring. It just seems to me we should be very careful about what kind of participation we have from the public at this time.

Mr. Smith: I do not think the committee would benefit by having a wide-scale additional public access now after all the briefs the committee has heard. But I do think my friend Mr. Renwick has made a reasonable point, and that is that the bill we have before us is a very different bill in many ways from the one the public had a chance to comment on earlier. It goes beyond the fact that we have heard comments and introduced a few amendments as a consequence. In fact, an almost totally new bill, so totally new that the minister has undertaken to reprint it as a new bill, has been brought in front of us.

In that sense, the committee may wish to have at least some input from groups that may be able to give us a viewpoint on the impact of these amendments that perhaps they had no chance to anticipate in the past. If they had known such amendments were coming, they might have given a slightly different view.

I think Mr. Renwick's suggestion is by way of compromise, as I understand it. He says we should not open it up to all sorts of public input, but the committee may wish from time to time to have certain groups come back and comment on the impact of the amendments, the impact of the new bill. In a sense, there is nothing, I suppose, to prevent the minister from having public input on one bill and then substituting a totally different bill on which the public cannot make any comments. I think he has not done that, but it is pretty close to a totally different bill, and I would think there could be some compromise.

Mr. Eaton: If we wanted to move amendments as we move along during the discussion, it would do the same thing.

Mr. Smith: Sure, that could happen. But, in fairness, I think Mr. Eaton would have to grant that this is quite a package of amendments and really changes in many ways the import of the bill. I think that we, as a committee, may want to hear some groups and we should not simply tie our hands and prevent public input. Mr. Renwick's suggestion that some public input be permissible at the committee on occasion is a reasonable suggestion, Mr. Chairman. I simply want to support it.

Mr. Lane: On the same point, I think that the criticisms Mr. Renwick and Mr. Smith have made are of two different types. Mr. Renwick, as I understand it, is saying that if there is somebody here who wants to make some comment at the time, he can so do. Mr. Smith, as I read it, is saying that if we want to have more input from another group that was here, then we can invite them to come and talk to us about their concerns. Those are two different things.

Mr. Smith: I cannot see the difference, Mr. Chairman.

Mr. Lane: I certainly see the difference. In one instance, we are inviting them to come back and talk to us; in the other we are asking them to talk because they are already here. Some of those people, as I pointed out, are many miles away. They would not have an opportunity to be here.



Mr. J. M. Johnson: Mr. Chairman, I would like to express my disappointment at the committee not proceeding. Surely we could proceed with the preamble. Every committee member here was aware that we would be discussing the preamble today and has had adequate opportunity to prepare their case. That is the first point.

With regard to the second statement that Dr. Smith made pertaining to a new bill, I do not think it is a new bill. I sat in at most of the hearings this summer. The understanding I had was that we had Bill 7 before us. We were listening to presentations from various groups about their concerns, and in light of the concerns, amendments were made. That, I thought, was the nature of the game.

Ms. Copps: A point of order, Mr. Chairman.

Mr. J. M. Johnson: Will you kindly let me finish?

Ms. Copps: Well, can we just deal with one or the other because we have got two issues under discussion here? Can we deal with either the adjournment or the question of public input?

Mr. Chairman: We could. I think everybody had wished to comment immediately after the minister's statement, and I said I would allow everybody. I am giving a lot of flexibility and shortly I shall zero in on the issues.

Mr. J. M. Johnson: Why would you not question your leader when he made his statement?

Mr. Chairman: There seem to be three issues here, and the chair is going to have to deal with them shortly.

Mr. J. M. Johnson: It is not a new bill. It could be just as easily handled by dealing with the old Bill 7. Then, as we move along, the amendments can be introduced. There will be amendments from both the Liberals and the NDP. We will have to deal with amendments as they occur.

I agree with Mr. Eaton that we should not have to have advance notice if we are going to introduce amendments. I also express concern about having the public invited back or having the public participate in further dealings with clause by clause. Mr. Renwick, I do not know how you can single out one group and allow it to make a presentation. It would place tremendous responsibility on the chairman, having to determine that one group could make a presentation and another could not. If we allow every group to make a presentation on every single amendment, we will not get this bill reported to the House this session.

Mr. R. F. Johnston: As long as we hear from Stu "Fig" Newton; that is the important thing.

Mr. J. M. Johnson: It depends if there is really interest in reporting Bill 7 out of committee. We had six or eight weeks this summer devoted to public participation. Amendments were made because of that participation. If we did not intend to make any amendments, what was the point of the debate?

Mr. Eaton: If it had gone back into the House as some had suggested, then the public would have had no chance for participation there.

Mr. Riddell: You people fail to remember that the government is the people.

Mr. Eaton: It was your two parties that wanted to take it back into the House, into the committee of the whole.

Mr. Chairman: We are not going to have to worry about this adjournment, I don't think, because it does not look like we are going to get there. Everybody has had one go-around. It strikes me that adjournment is the last thing we should consider until we get through the others.

As I understand it, we have agreed that we are not going on the amended version. Second, I felt there was a consensus that everybody would try to have all his amendments in as soon as possible. Some indicated that they cannot have them all ready tomorrow, but they will try to get them in a day ahead. I would presume if they are ready two days ahead, that means they will get them in as soon as possible. I am also under the assumption that that does not preclude an amendment to an amendment or something arising out of normal debate. But I would presume the tone there is that nobody is holding something back to sneak it on the table.

Hon. Mr. Elgie: Promise?

Mr. Chairman: Are we in agreement on the amendments? Yes. Then that is out of the road.

The other issue that was brought up was the matter of public input, whether there ought to be more or on what basis other than we have already had. I should tell you that I think I went on record in the chair in stating that we would not allow debate during the hearings and we would not allow hearings during the debate. So I really do need direction. Unless I am directed otherwise by this committee today, I think that I have stated we would not allow any more public debate as we went through clause by clause. I think I was on the record as saying that. Given that and given that several members have addressed it, is there any further discussion on that issue?

Mr. Renwick: I have just a very brief comment, Mr. Chairman. In raising the matter, I was not asking that it be made a definitive decision of the committee as to what should happen. I was simply saying that a number of interested bodies that have made presentations, when they have reviewed the amendments which have been proposed by the government to the bill on a particular section of the bill, which is related to one of those amendments to which they have not had an opportunity to address their remarks, may appear here. They may say they would like to make a further comment on the clause-by-clause discussion. Then I think it would be extremely unwise for this committee to have bound itself in advance to some rigid rule by which we would not allow to be made that kind of additional comment that might be helpful to the committee.

It is on that very low-keyed basis that I simply am quite prepared to accept the rule or the statement or the guideline that the chairman very early stated at the commencement of the hearings very much as the general basis of our process. But I certainly am not going to sit here in a committee and find that, for example, Mr. David Lepovsky has come up from Harvard to make a specific technical point that only he may very well be able to make with respect to provisions related to handicap, but cannot make it.

11:30 a.m.

If he requested an opportunity to make a comment about a matter in which he is more fully informed than either anybody in the ministry or anybody in the committee, I certainly am not going to sit back and say, "Oh, I am sorry, we have a hidebound rule that says no, we cannot hear it." I am not asking for a definitive statement from the committee as to what it would do in such circumstances. I just wanted to signal very clearly, if that situation arises, that we as a matter of courtesy, if for no other reason, would be required to give credence in the particular circumstances.

I also wanted to signal as clearly as I could to members of the public that if there are matters now of concern to them with respect to those amendments, then this committee is not shutting them off. I understand members of the public respect the burden of work which is on top of us in connection with this bill. It is not going to be abused by anybody. Certainly I am not going to abuse it. But I did want by my comments to give those two signals. I want interested people to continue to be interested in the bill, and if they have specific comments, let us deal with it at the time on the specific matter which is before us. I accept wholeheartedly, and have from the beginning, the chairman's statement that it was a wise general way in which to proceed.

Ms. Copps: Perhaps in an effort to clear up the situation I would like to move a motion that the amended version of the bill be circulated among those people and groups that have appeared before the committee, and that they be allowed to return to the committee for a time-limited period--I would specify five minutes--whereby they could respond to amended elements in the bill. That is in the form of a motion.

Mr. Eaton: Mr. Chairman, I would like to speak on that motion and certainly oppose it. How can you do that? How can you circulate the amendments as proposed by the government to the committee and not circulate all amendments that may be proposed by other people during the debate and have people come back and comment on them all? We can find ourselves in a situation such as happened once or twice before, where we had one particular person lobbying for somebody, who spent all his time at the committee and wanted to interject and get into the debate that was taking place in regard to each clause as we went along. I just do not think that is acceptable.

I think that these amendments have evolved because of what people have been saying before the committee. It is the same thing for the opposition members who are going to propose amendments.



They have done it because of input they have received from various groups. We have had a continuing opportunity for that. People who hear the amendments who may be here can have an opportunity to say to some of the members how they feel about an amendment, but if we were to have circulation of these amendments to every group that has been before this committee and invite them back for five minutes even, they could come back for five minutes on every clause.

Ms. Copps: Excuse me, I specified in the motion that they could respond only to the amended versions in the revised bill.

Mr. Eaton: There are 30 amendments. If each of the 100 people that appeared before the committee do so on each of the 30 amendments for five minutes, where are we at? It is not the kind of procedure I think we should be following. I can understand what Mr. Renwick is saying and I would find that maybe acceptable. I think we even have to be a little careful with that, but certainly I would oppose a motion that the amendments be circulated to every group and that they be invited back to make presentations. If we get the amendments made up as they would be made proposing an amendment to each section and if the opposition ones are available, then that package can be available to anybody here or it could be sent out. If they want to get comments back to members et cetera, they could, but not themselves appear before the committee.

I just draw to your attention that some people wanted to take this bill into the House to go clause by clause. At that point, the public will have no chance for participation in the discussion at all. This will at least allow us, if we wish, to hear the experts Mr. Renwick referred to. But I would oppose encouraging everybody to come back and make presentations.

Mr. Riddell: I would be interested in knowing who it was that was insisting that the bill go into the House clause by clause to bypass the committee, This comes to me as a bit of a surprise.

Mr. J. M. Johnson: Your House leader, Mr. Nixon, mentioned that.

Ms. Copps: It was not this bill; it was the previous bill. I have only been in this Legislature for six months and Bill 7 is the bill under discussion, not any previous bill.

Mr. Eaton: It could not have been any previous bill. It was in the past week that the House leaders had discussion in regard to taking it into the House.

Mr. Riddell: Let me say, Mr. Chairman, this committee extended the opportunity of people and organizations to come before it to make some input into this bill. The people responded. They came and helped tremendously. Obviously, their help was of great assistance because the minister has seen fit to make several amendments to the bill. I am just wondering if you are sending your amended bill to the individuals and the organizations that presented briefs, not indicating in the letter that they can come

back to make further input into the committee, but just out of courtesy so that they may see what has taken place. If they want to come back to the committee to sit in and listen to the clause-by-clause discussion, so be it. That is at their discretion. Do you send a copy of the amended bill to all those people, to something like 150 individuals or organizations that made the presentations?

Hon. Mr. Elgie: I have never heard of that procedure being followed. Certainly your leader, Dr. Stuart Smith, will tell you that in Bill 70, the occupational health and safety bill, we did not send out the reprinted bill to all those who had appeared before the standing committee, not for any reason other than the fact that the amendments will be well publicized and will be well known by people who are interested in any event. I do not think it has been a matter of custom or practice, but that is not for any particular reason.

Mr. Riddell: As a matter of interest, how do you publicize the amendments? With respect to the amendments you are making to the bill, how will the public be informed?

Hon. Mr. Elgie: I think we have several reporters here today who will be reporting the events that are taking place, Mr. Riddell, in many newspapers throughout the province. I do not think that there is any doubt that there will be good public information about the matter.

Mr. R. F. Johnston: Excellent. They will be well informed.

Hon. Mr. Elgie: Yes. There is going to be a variety of viewpoints expressed by different papers, I am sure.

Mr. Riddell: The media do a good job, but they will zero in on some amendments--

Hon. Mr. Elgie: You can always give them the consideration they deserve.

Mr. Riddell: --they will not place a great deal of importance on other amendments, whereas somebody else might.

Mr. J. Johnson: I understand the Liberals are going to propose an amendment that will likely take up a week's discussion.

Mr. Eaton: I have just a quick comment on procedure. When we are in committee and amendments are made, if they are made and passed immediately, the public is not going to be aware of them right then. But when we report the bill back, the new bill is printed and goes back into the Legislature. People can then have a chance to get to the minister or to any members. It then goes before the committee of the whole House. At that time, that is the bill as amended. These amendments have not even been passed at this point; they are just proposals. So the bill, as amended and recorded by the committee, is available for anybody at that point to discuss.

Mr. R. F. Johnston: I am a little reluctant to support the motion before us and I would like us to call the question, or we can put aside that last matter about when we would adjourn and not worry about it as a serious question for the morning.

What is your opinion, Mr. Chairman, in terms of the suggestion Mr. Renwick made, that as a guideline we accept what you have said from the outset about our approach on this, but that we are not absolutely hidebound, that if the committee, as it reaches certain points as we go along, feels it would be useful to have somebody come before us, then we would be open to do that at that time, but on an ad hoc kind of basis?

Mr. Chairman: I have some difficulty with it, being the chairman who is going to be asked to rule on what the difficulty is. If the committee decides to hear from anybody else again, whether it be one expert or whatever, realistically I think a person would like to have the expert who will reinforce what he wants to sell to the committee. I do not think I am saying anything out of line here. But if we hear from that one, how am I going to rule against hearing from the other 132 that may have other opinions?

11:40 a.m.

I do not want to be in that position and I will rule against every one, unless I am completely overturned, because you are going to ask me to make a judgement as to whom we should hear from again or whom we should hear from on a particular issue. I really think that we have had a wideranging viewpoint. Everybody can give his own individual viewpoint; everybody can quote all the experts he wants on that basis.

Any member of the public can still write to the committee. If they write to the clerk or to me, I will make sure that every member of the committee gets it, that it goes on the record so that every committee member can be aware that a certain group does not like the way things seem to be proceeding or what not. I think that will get the message across. I cannot see any other reason for somebody to want somebody to speak, other than to reinforce his or her particular argument, which would put me in the position of having to rule for or against everybody else who wants to bring in an expert on his particular argument.

That was my understanding of the purpose of the hearings. I really have great difficulty if, after all that input and access to the experts before the committee and to the clerk in writing, we cannot proceed with clause by clause. I do not have a lot of experience here, as you know, but I have some experience in chairing meetings and in public input with meetings. I can see the chair being challenged time and time again legitimately. I can see this bill not being reported back for maybe a year.

Ms. Copps: On a point of order, Mr. Chairman, can we not deal with the motion that is on the floor?

Mr. McNeil: That is what I was going to say. Can we not call the question?



Ms. Copps: That is a different question. I have proposed that we send a notification to each of the respondents and allow any of them to intervene. You will not be asked to make any collective decision.

Motion negatived.

Mr. Riddell: The NDP against the people.

Mr. Chairman: Is there anything else? I do not know whether that clarifies the position. Are we now ready to proceed procedurally? I believe I have the direction I need.

The last question that seems to have been addressed was whether we (a) adjourn now, (b) start right into it now, or (c) proceed at least with the preamble. Is there any objection to proceeding now with the preamble? Let us start with the preamble.

Hon. Mr. Elgie: Mr. Chairman, could I give a copy of this amendment to each of the opposition parties? We just have three copies.

Mr. Chairman: Mr. Johnston, do you have a proposed amendment to the preamble? Does everybody have that? I would suggest that if there are any amendments to the preamble, they all be circulated.

Mr. R. F. Johnston: Mine are in the hands of the clerk.

Mr. Riddell: Before we get to the preamble, I think there must be a typographical error in the explanatory note. I am sure it was not the intention of the draftsman to word it in section 2(d) "age over 18."

Hon. Mr. Elgie: That is a typographical error. It should be worded "age 18 or over" as it is in the definitions section.

Mr. Chairman: Mr. J. M. Johnson moves that the second paragraph of the preamble of the bill be amended (a) by striking out the words in the first and second lines "that every person is equal in dignity and worth" and by substituting therefor the words "the dignity and worth of every person"; and (b) by striking out the word "his" in the third last line and substituting therefor the word "the".

Hon. Mr. Elgie: Mr. Chairman, since the preamble is in place to reflect the United Nations Universal Declaration of Human Rights, the founding declaration, and to pay tribute to those people who drafted that original declaration, it was our feeling that, inasmuch as possible, the wording should conform closely to that declaration. We, therefore, propose this amendment.

Motion agreed to.

Mr. R. F. Johnston: Is there a consensus on that?

Mr. Chairman: Yes.

Mr. R. F. Johnston: I have an amendment to the preamble in the first paragraph. Unfortunately, what I handed out is a misprint. There are two covenants I want included.

Mr. Chairman: Mr. R. F. Johnston moves that paragraph one of the preamble be amended by adding "and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to which Canada is a signatory."

Mr. R. F. Johnston: I had only mentioned the one covenant. There are two covenants which the country has agreed to. May I speak to the amendment?

Mr. Chairman: I am just trying to make sure I have it. This is to paragraph one?

Mr. R. F. Johnston: This is paragraph one, after the words "as proclaimed by the United Nations." There should be added "and the International Covenant on Civil and Political Rights" and insert after that "and the International Covenant on Economic, Social and Cultural Rights to which Canada is a signatory."

Mr. Chairman: Okay. You may speak to your amendment, Mr. Johnston.

Mr. R. F. Johnston: The reason I included those amendments--we spoke on them in the opening debate and also during committee hearings--is that what we are talking about in the present bill is the universal declaration of human rights in the 1940s. That has been updated in recent years with two major covenants which Canada has signed and which I have named in paragraph one. It strikes me that in the preamble to this bill being re-established now in 1981, we should be including the most recent agreements to which Canada is a signatory.

It is interesting to note that we are as much bound in international law by those covenants as we are by the initial declaration of human rights. Not only is the nation bound by those covenants, but also states within a nation. Therefore, a province like Ontario is also seen to be bound by the signature that has been placed on those covenants by the government of Canada. It strikes me as useful to add to the preamble that it recognizes the fact that there has been some change at the United Nations since 1946 or 1948 or whenever the initial declaration was passed.

Hon. Mr. Elgie: Mr. Chairman, as I said in my remarks, in introducing the preamble, which I am sure the member knows is not present in all human rights codes, the Quebec code and so forth--we have simply been trying to pay tribute to those pioneers who drafted the universal declaration of human rights. As the member knows, there have been some, and there will continue to be other, international covenants. I think the implication of what he is proposing is that every time there is a covenant we reopen the bill and add it.

In addition to that, I also have concerns that some of the matters referred to in some of those covenants go beyond matters referred to in the code. I do not think anyone should be misled to think that any preamble refers to anything other than the matters that are dealt with in this code. The obligation of the federal and provincial governments to respond to the covenants is up to the individual ministries and the individual areas of government to respond as they deem fit. I would have to say that the government opposes this motion.

Ms. Copps: I would have to speak in support of the amendment because, notwithstanding the fact the human rights proposals may not deal directly with some of the items and issues raised in the covenant on international economic, social and political rights and the covenant on civil and political rights, it is a principle that this document be in accord with those covenants. Since we already know that Ontario, through the federal government, has been a signatory to those covenants, I see no reason why we cannot include them as part of the preamble as a statement of economic, political and social justice within the context of the Human Rights Code.

Motion negatived.

Mr. R. F. Johnston: In addition to my first motion on the preamble, Mr. Chairman, I have an amendment to paragraph two of the preamble.

Mr. Chairman: Mr. R. F. Johnston moves that paragraph two of the preamble be amended by deleting the words "that is contrary to law," so that it would just read "...and opportunities without discrimination..."

Mr. R. F. Johnston: The reason we are proposing this amendment is that the statement in the preamble, one would hope, would be one which recognizes the principle that discrimination in any form is something which is unacceptable. Whether or not that is covered by precise laws at any given point in time is not the concern that we have in terms of a preamble. We want to state the principle that discrimination is something which is unacceptable to us in our society.

What we are trying to do, and I am not trying to hide the fact, by asking for this to be deleted is to open up the definition of what is discrimination here in that preamble--we will do the same as we move into the definitions as to who may be discriminated against--so that there is an understanding that we are saying in an open-ended way that we, as a society, are opposed to discrimination that adversely affects our citizens. To leave it as it is now would be putting an unnecessary restraint on the definition.

If the minister wishes to maintain the closed nature of section 1 of part I in terms of those who can be discriminated against, that would still be his option. But the notion that in our society, in terms of a preamble, it is unacceptable to us to have adverse discrimination would be something I would like to see and our party would like to see made very clear, and not just put down discrimination "that is contrary to law."



Mr. J. M. Johnson: On a point of clarification, does this not contravene section 17 of the bill, which pertains to the Catholic schools and which states that the British North America Act and Education Act would prevail? It is on page five of the original Bill 7.

Mr. R. F. Johnston: I understand what you are saying, but I do not think it needs to. If you are putting it in to state which kind of specific laws you were concerned about, fine. But what you are talking about in the preamble, hopefully, is the general principle. That is why we are accepting the general principle of the human rights declaration. We do not want to upgrade it with all the things that have happened in recent times. All we are saying in this is that the notion of discrimination is unacceptable and that we can get into the actual definitions of what that is as we go into the bill. But I do not think it necessarily affects something which is covered.

Mr. J. M. Johnson: I would think that there could be some misinterpretation.

Mr. R. F. Johnston: I can move an amendment to any of those sections.

Mr. J. M. Johnson: You heard the presentations. My colleagues on the committee have a copy of the papers which the chairman so kindly referred to as the Renwick papers. This one is on definitional problems in Bill 7. This was one of the matters which I raised, and I am only reciting what is in the paper prepared by the legislative library research for me on this very question. That is the first point.

Hon. Mr. Elgie: May I comment on this? Members will recall that in the existing code the grounds of prohibited discrimination were outlined in detail in the preamble--age, sex, race, religion and so forth. The phrase "contrary to law" is simply to replace that listing of things. We have to be clear that this code deals with certain grounds in certain areas that are specified and are specific. In the government's view, it would be misleading to misconstrue the preamble in any way that was, from an interpretation sense, intended to go beyond the specific grounds of interaction in the work place, in accommodation, in contracts, et cetera.

It is our view that would be and could be perceived as being misleading, but there should not be any doubt in the government's public policy that it shares your concerns about discrimination in general. But in this particular document we are talking about, it is confined to certain areas and to certain grounds, and nothing in the preamble should be contrary to that purpose and to that function.

Mr. R. F. Johnston: You do not feel that the next paragraph handles that?

Hon. Mr. Elgie: No, I do not.

Ms. Copps: I want to commend my colleague from the NDP for introducing this amendment because I think he addresses an issue which was brought up numerous times during the hearings, and that is the question of inclusionary as opposed to exclusionary wording. The minister has made it clear that he feels it is public policy to discriminate against some groups in this province. He has just said in his statement that the only groups that are to be protected under the law are the groups that are listed.

There has been some legal precedent which would mitigate against exclusionary-inclusionary wording as per the British Columbia ruling in the Supreme Court with respect to the suit taken against the Vancouver Sun when it did not want to publish a particular newspaper ad. So there is probably enough legislative legal precedent to basically speak on behalf of an exclusionary form or mode of amendment.

This attempts to address the fact that all people in this province should not have to put up with discrimination and, in principle, it tries to outline the inclusionary technique which was suggested by several of the people who appeared before the committee. In that sense, it is general enough to cover the broad spectrum and to state that it is public policy that this province does not want anyone to be discriminated against. Yet it still allows for the use of exclusionary technique further in part 1 whereby the government can state public policy with respect to specific prohibited grounds of discrimination. I think we should support the amendment.

Mr. Renwick: Mr. Chairman, I would not want to get into this technical question of whether or not the expressed intention of the preamble will affect the substance of provisions of the bill. It is my understanding that when it comes to a question of statutory interpretation, which is what we are dealing with, that the preamble cannot influence the precise wording of the bill. I would appreciate it if counsel to the committee, Mr. Stone, would comment about the legal effect, as a matter of statutory interpretation, of a preamble generally in its relation to the rest of the bill. I may be quite wrong in my understanding of it, but a precise statement either now or at some point from the legislative counsel would be most helpful to us.

Mr. Stone: Mr. Chairman, preambles are shunned by legislative counsel across the country because of that very question. They are an invitation to be read literally and argued that they apply in their terms. Then the same law is repeated later in another form, and people, in effect, have a double choice. That is not to say that argument ought to succeed.

The status of a preamble is, if applied properly, that it is part of a bill, and it is resorted to in order to settle a question that arises in interpretation as to two arguments as to the extent of the meaning of a phrase. The preamble can throw light on that and decide it one way that it is to be read, wider or narrower. Or, where there are two meanings, where one seems to be supported by the preamble and the other is not, then it will decide in favour of going with the preamble.

Mr. Renwick: I am not quite certain what that means, but I think in the specific instance, as I understand what Mr. Stone has said, that if the language in part 1 of the various expressed statements of the freedoms from discrimination remains as it is, this change in the preamble of the bill will not widen or otherwise influence the bill. In other words, where the first section says "a right to equal treatment... without discrimination because of race, ancestry"-- et cetera, then in no way can a court--because we have deleted the words "contrary to law" in the preamble--add an additional ground of discrimination in the way in which the bill is drafted.

That is the interpretation I am going to place on the matter because I wanted to underline and emphasize what my colleague Mr. Johnston had said about what our purpose is, on which we will move an amendment in section 1, namely, to broaden the scope of the bill. But that does not alter the question that in the preamble I see no reason for the minister to have introduced a refinement of this limiting nature which is not presently in the preamble to the present Human Rights Code. I get quite upset--

Hon. Mr. Elgie: It is there.

Mr. Renwick: Maybe I will have to retract that statement.

Mr. R. F. Johnston: it is general public policy

Mr. Renwick: I would like to read it very clearly, and perhaps the minister is right and perhaps I am right. I still tend to think I am right on it.

The second recital in the preamble to the present Ontario Human Rights Code states: "And whereas it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin," as compared with, "And whereas it is public policy in Ontario to recognize that every person is equal in dignity and worth and to provide for equal rights and opportunities without discrimination that is contrary to law" means that we will, in enacting this preamble, introduce a restrictive element which is not presently in the preamble of the code as it now exists, because the restraining, limiting words "without discrimination that is contrary to law" do not appear in the present code.

I do not intend to spin out jurisprudential arguments on this occasion with the minister, but it is quite clear that what we are saying is that the inclusion of this clause, that is, the clause "without discrimination that is contrary to law," implies that forms of discrimination which the code does not prohibit are legal, and any discriminatory legislation that the Legislature enacts in the future will also be legal as long as it is not contrary to law.

That is the first point I want to make. There is no merit in these particular points. All of my colleagues on the committee have a copy of the papers which the chairman so kindly referred to them as the Renwick papers. This one is on definitional problems.



The second point I want to make is that it is extremely interesting--and I recognize that there is not yet a Canadian charter of rights--and I want to make it very clear that the Canadian charter of rights in its original proposed form was altered in the committee of the whole House in the House of Commons in order to cover precisely this point.

The original charter statement was that the Canadian charter of rights and freedoms guarantees the rights and freedoms set out in it, subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government. It has been amended, and if it goes forward in its present form and becomes part of the constitutional change, in the present wording wording it will read, "The Canadian charter of rights and freedoms guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

I am simply saying that the same substantial question was raised in the public forum of the committee of the House of Commons, which discussed it at some length, and they made the appropriate change, not to pretend in the very generalized honorific terms of a preamble we are saying something that we are not saying. In other words, what we will be doing is indirectly condoning every single example of discrimination in our society which is not expressly stated in this bill.

I do not think there is anybody in this room in this committee with the arrogance to suggest that these are the only basis on which discrimination exists in our society in an adverse way.

The third point I want to make is that in the case where the decision of the Supreme Court of Canada was given while this committee was in session, the case of Bhadauria and the board of governors of Seneca College of Applied Arts and Technology, that decision highlights this precise point. Let me just put the facts on the record. Miss Bhadauria, of east Indian origin, had a PhD in mathematics, an Ontario teaching certificate, and seven years of teaching experience. She applied for a position with Seneca College a total of 10 times between 1974 and 1978, but was never interviewed. She sued the college for damages representing loss of salary and mental anguish. Her claim was recognized by the Court of Appeal of Ontario. However, the Supreme Court of Canada held that no such cause of action exists at the common law, and went on to state that the very existence of a human rights code forecloses this kind of action, that is, that a plaintiff must use the code and be satisfied with the procedure it provides.

I trust that synoptic statement of the issue is very clear, that we now have what we did not have before this committee came into session, an expressed determination by the Supreme Court of Canada, so far as I understand that decision, that a person in Ontario has no right of action in the courts to remedy any discriminatory action against that person if there is a human rights code; that this Legislature will have stated every ground

on which discrimination is prohibited; that in the absence of any other statement, the Bhadauria case simply says that we are restricted within the four corners of the Human Rights Code.

I am not arguing whether or not the matter is right or wrong. All I am simply saying is that, for the purposes of this preamble, I would rather forego the whole preamble than have anybody get kidded by the kind of language that is in it, that it is of some significance, because it has no bearing on or no relationship with the obligations that Ontario has assumed by virtue of the adherence by the federal government to the two international covenants as well as to the United Nations Universal Declaration of Human Rights.

If we are trying to indicate to the public for some PR purpose that this is a great assembly and that this bill, when it is passed in its final form, is just the finest piece of legislation that there is, and to have people recite in laudatory terms on appropriate occasions the preamble to this bill in support of that proposition, then we are engaged in deception and hypocrisy, and I do not think this committee should be engaged in that kind of deception and hypocrisy.

I simply want to try to emphasize Ontario by law, international and domestic, is bound by the international covenants on civil and political rights and on cultural, economic and other rights. It is bound. The report of Canada to the United Nations with respect to its compliance has nothing to do with simply federal laws. There are 55 pages in here related to whether or not the laws of Ontario comply with those international covenants. I am not going to read the 55 pages today to the committee to indicate the point, but what we are saying in this is that we adhere to the United Nations Universal Declaration of Human Rights.

Unfortunately, I was out when the amendment passed on a matter which I feel strongly about, but I shall have an opportunity to make my points on it when the bill goes back into committee of the whole House. Then we come down to, "The Universal Declaration of Human Rights as proclaimed by the United Nations." We come down to the two international covenants. We come down to the impending, I hope, Canadian charter of rights and then we come down to our bill. We adopt all of this glossy language, and then we read the fine print, "without discrimination that is contrary to law." If you cannot find it here, you cannot find it anywhere--that is what the Supreme Court of Canada said--and you have no recourse to the courts on any other ground of discrimination.

That is the extent and the importance of what we are talking about in the bill. I reiterate what is simply said here, that the inclusion of this clause implies, and I think it does more than imply, that forms of discrimination which the code does not prohibit are legal, and any discriminatory legislation that the Legislature enacts in the future will also be legal as long as it is not contrary to law.

We are embodying in this bill this kind of language. I say, let us strike the preamble. Let us not kid anybody. Let us just treat it as an ordinary statute. There are only--Mr. Stone can correct me--a couple of other statutes in the province that have preambles to them. Let us strike it. Let us not kid anybody, because those words are of such significant limitation as to speak very directly. I am not talking about the minister, I am talking about this assembly passing a bill which will turn out to be seen to be deceptive and seen to be hypocritical. I say either accept my colleague's amendment on that provision or let us move simply to strike the preamble.

I have gone on at some length, but I wanted to indicate that I feel somewhat deeply on the kind of limitation and straitjacket that the government has proposed in this bill, disguised as if it is some all-embracing, finest human rights code that exists anywhere. Do not kid yourselves. That is what we shall hear when this is all over, that it is the finest, if not in the western world, certainly in the universe. I simply want to emphasize to you the importance of the very simple, straightforward amendment that my colleague has presented to the committee.

Hon. Mr. Elgie: Mr. Chairman, I just have a couple of comments.

I do not think Mr. Renwick is implying that the government's general public policy about discrimination is well known. What we are talking about here is this bill. What we are saying in this preamble is intended to pay tribute to the universal declaration of human rights, the pioneer work that was done. But it is not intended in the preamble, nor do I think members should understand otherwise, to expand or reduce the areas or grounds that are dealt with in that code. Nor, I submit, did the previous code where, instead of using the phrase "contrary to law," it outlined the grounds. I would submit that a careful scrutiny of the proposed, even the revised charter, also includes the words "by law."

I do have to clarify for the committee's information the Bhadauria case that Mr. Renwick has referred to because there was no common law cause of action that the complainant had in that case. Her cause of action was one created within the human rights legislation. The issue before the Supreme Court of Canada was not whether there was discrimination in common law to be tolerated, but whether or not she has a cause of action arising from a matter referred to in this code. The Supreme Court of Canada held that since the code was created to create causes of action to be dealt with by a commission, the courts had no way of dealing with it. So let us clear the air on that one.

As a general matter of the preamble again, let me emphasize that this government is not intending to try to mislead anybody about this code. The preamble pays tribute to the original declaration of human rights and it clearly says that the preamble cannot be used to expand or restrict the matters referred to in the code. We support continuing that preamble as it has been in previous codes for many years and we would be opposed to the amendment that is presented.



Mr. Smith: I want to say that I agree with Mr. Renwick here. What we have in front of us is a bill which does not really need a preamble at all. The contention of the minister is that the preamble is somehow paying tribute to the past. If the preamble merely said, "Whereas we wish to go on in the glorious tradition of those who have gone before and we wish to pay tribute to those human rights pioneers, we therefore enact as follows," that would make his point quite clear. But he does not say that. He goes on in the preamble to say many other things other than we wish to pay tribute to those who have gone before.

Essentially, what we have here is probably in a small and relatively unimportant instance an example of the difference between Canadian and American traditions in the field of human rights. We have this sort of cautious preference for peace, order, good government, lawfulness and so on which has always marked Canadian traditions as opposed to the American tradition which is a little more poetic, which speaks of the equality of individuals, which speaks of the essential importance of individual human rights. I suppose it is really a philosophical difference that marks those who feel that human rights are something far more important than any government and those who feel that the keeping of order on the part of government is far more important than so-called human rights.

I must say I believe our traditions, generally speaking, are very good ones and excellent ones, and I do not like a lot of what I see south of the border. But in the matter of human rights, I must say I prefer the American approach which says essentially that human rights should be considered as something sacrosanct, something above all governments. I think Jefferson had a very serious attitudinal difference with those who framed, for instance, the British North America Act, and I believe that if we are going to have preambles at all, they should either be terribly short, simple sorts of things as the minister suggested, such as "we wish to pay tribute to those who have gone before," or they should be poetic.

They should carry lofty principles. They should be inspirational in some way, or else let us not have them at all. What possible good does it do to muddy the waters. As Mr. Stone, as counsel, pointed out, legislative counsel generally do not like them because they muddy the waters. Why bother muddying the waters at all unless you are going to say that we ordinary humans here in this Legislative Assembly are trying to grapple with something that we think goes beyond our usual, every-day, law-making efforts to regulate the way in which we buy, sell and carry on commerce and treat one another.

But we are trying to reach imperfectly, as we have to as legislators, some loftier principle which is more important than government, which is more important than laws that may be passed from time to time, which has to do with the essential dignity of human beings, no matter what form of government we have. I think Mr. Renwick is essentially saying that if we are going to have a preamble at all, we should reach for that loftier principle. I hope I have not misstated him in this instance, and certainly that is what I believe.

I think, frankly, by including the proviso, "that is contrary to law," what you are really saying is that it is public policy in Ontario to recognize the dignity and worth of every person, provide for equal rights and opportunities without discrimination, although you want to make it clear that we do accept certain forms of discrimination, provided they are either legally sanctioned or provided they have not been specifically legally prohibited.

That lacks a certain poetic inspiration, I will say to begin with. In addition to that, it implies that we set a higher stake on this matter of the laws that various legislatures pass than we do on the very principle of human worth and human rights. I think what Mr. Stone has said to us is very important. What he has said is that judges will base their judgements on the substantive portions of the act, but where there is some conflict, they may, in fact, look to the preamble for guidance and say, "What was the Legislature reaching for? What did it consider to be the important matter to be enshrined for all time? What were they trying to get closer to when they brought in this act?"

If we leave it the way it is now, the judge will say what they were really saying is that some forms of discrimination were very important to them and they wished them kept and maintained because they felt that these legally sanctioned forms of discrimination were very important to the traditions of Ontario.

If we take out the phrase, then the judges will say they were trying to say there is a basic human right that transcends certain regulations and laws as may be enacted from time to time, and they were trying to say that where, without doing violence to the existing law, it is possible to impose this principle, that principle ought to take some precedence. That is what the judges will determine; that is how they will read it, and I think Mr. Stone can confirm that I have stated it fairly accurately.

That being the case, we have a choice to make and, obviously, it would depend on whether the minister accepts this or not because of the makeup of the committee, which itself reflects the makeup of our elected parliament at the moment. But I would hope that we might just recognize that if we are going to have a preamble at all, we should reach for what we truly believe this law is designed to approximate, that state of grace which this law is trying to bring us closer to, rather than enshrine in the preamble our belief that certain forms of legally sanctioned discrimination are terribly important to us and must be maintained as a kind of principle for all time.

If we are going to have a preamble, then for heaven's sake let us reach to where we want to get rather than reiterate our great belief that any law that now sanctions discrimination must be held sacrosanct.

Mr. R. F. Johnston: Just to summarize if I may, the points have been well made by the Leader of the Opposition and by my colleague Mr. Renwick in supporting the motion. If one reads this preamble, Mr. Minister, and one reads that first paragraph, one sees that surely you are reaching for the larger principle.

you are saying, "We are recognizing the inherent dignity and the equal and unalienable rights of all members of the human family."

That is a very broad principle, one would hope, without talking about the particular legislation that may be available in any given country around the world which may intrude upon the definition in terms of how those equal and unalienable rights are handled in places which are maybe less free than we are here.

Let me move into the second matter. The motion as you have amended it reads well when you have that particular little item I want removed. Without it, it reads: "And whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination...and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person..." et cetera.

Surely the general principle we are after is what is also stated in paragraph one, but this brings it to our area here in Ontario. Then you start to lead into the body of the bill in your third paragraph, which states, "...these principles have been confirmed in Ontario..." Then we have these enactments by the Legislature and the statement that there is a need to extend our human rights legislation in ways that follow. Then we go into the body of how we want to do the thing.

I do not understand why you are so insistent that this restrictive clause should be placed in the preamble. I would ask you to reconsider it, although I gather you are not going to. I hope that our debate this morning has not just been a matter of trying to fill the time that otherwise would have been taken up by an adjournment of the morning session.

Mr. Riddell: After having been presented with very reasonable arguments, would it be fair to ask for Mr. Stone's opinion on this? He seems to be nodding his head very much in favour of what my leader was saying. Is it being unfair to ask for his opinion?

Mr. Chairman: I think Mr. Stone has certainly given his opinion at this stage. It certainly came through loud and clear to me.

Mr. Riddell: In a roundabout way he gave an opinion, but would he be just as happy with "that is contrary to law" deleted?

Mr. Smith: In fairness, I do not think we should ask Mr. Stone's opinion on whether he would be happy or not. I think we can ask him for expert views on what the meaning of it is. I think in fairness to Mr. Stone--he can speak for himself--when he was nodding his head, assenting to what I was saying, I think he was saying that I was not misrepresenting the legal implications of the various ways of putting the preamble. He should not have been taken, I am sure, to have necessarily agreed or disagreed with this matter. He is not an elected representative and I do not think, in fairness to him, that his personal opinion should be implied or put on the record.



Mr. R. F. Johnston: It may have been a sign of great affability.

Mr. Smith: He may have been nodding off to sleep.

Mr. Riddell: I am just recognizing who it is who drafts these bills. That is all.

Mr. Renwick: Mr. Chairman, I just want to make a very brief reply to my friend the minister. He indicated that somehow or other he had answered the point which I made, which of course he did not. I simply want very clearly to state what happened in the Bhadauria case. I stated the facts of the case.

The case went to the Court of Appeal, which is the highest court in Ontario, the Supreme Court of Ontario, the Ontario Court of Appeal. That court held that a plaintiff, that is, Ms. Bhadauria, who can establish she was refused employment because of her ethnic origin and thereby suffered damages, has a common law action for the tort of discrimination against the person who refused her employment.

She won the case in the Ontario court. The Supreme Court of Canada held that she had no such cause of action at something called common law, whatever that means, and then went on to say that the very existence of a human rights code forecloses that question so that she has no recourse to the courts.

My friend the minister tried to equate the processes of the Ontario Human Rights Commission, which are entirely different from the processes of a court of law on these matters. I simply point out that our Ontario human rights legislation depends solely on the procedures of investigation, conciliation and inquiry, with the initiative at each stage--and basically that is true of the bill before us--resting with the commission, not with the complainant or the plaintiff in the matter.

There is very strong argument being made that, in addition to the rights under the provisions of the Human Rights Code, we should attempt to establish a civil right in a court so that a person is not restricted only to the very limited protection which a person might receive under the Human Rights Code.

The argument has been well reinforced by the Leader of the Opposition and by my colleague in reply. I simply ask the members to accept my colleague's amendment.

Motion negatived.

Mr. Chairman: Is there anything else on the preamble?

Mr. Renwick: Unless there is some rush to pass it today, I would prefer to not be foreclosed until after our perusal of these extensive amendments. I do not believe there is anything further on the bill, but I would hate to see it pass forever at this point.

Mr. R. F. Johnston: It may be we will want to consider the motion to delete at the time of debate.

Mr. Renwick: Is there any difficulty with tomorrow night? We could then conclude the preamble and start section 1.

Mr. Chairman: Thank you very much. We stand adjourned until eight o'clock tomorrow night.

The committee adjourned at 12:33 p.m.





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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, OCTOBER 29, 1981



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
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Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
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Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Boudria, D. (Prescott-Russell L) for Mr. Eakins  
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of the Attorney General:

Stone, A. N., Senior Legislative Counsel

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister  
Brandt, A. S., Parliamentary Assistant  
Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon. R. G., Minister  
Hess, P., Director, Legal Services

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, October 29, 1981

The committee met at 8:11 p.m. in room No. 228.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order.

At the last meeting, Merike distributed the draft book. I confess I did not bring mine tonight. That book, together with the original--the one with the clips--then comprise the complete summary from legislative research, or library research, for clause by clause. I trust everybody has the three sets of amendments.

We adjourned our last meeting on the preamble. Are there any further discussion or amendments on the preamble?

Mr. Renwick: I am concerned that I may have failed to get across to my colleagues, the other day, the immense significance of what is taking place in this bill and the immense responsibility in the Legislature about it, in good part because of the way in which it is drafted. I do not want anybody to be under any misunderstanding of it. If I make an incorrect statement, I hope that I will be corrected, because that is the purpose of the committee. I am going to make my statements in quite a categorical way.

Up until the Supreme Court made its decision in the Bhaduria case--and I am not going to go over the facts of the case; we dealt with that the last time--there was some reason to believe that it would be possible, in cases of discrimination on other than the prohibited grounds, to get some protection under the law, either the law of Canada as enforced in Ontario or the law of Ontario. The Bhaduria case now makes it absolutely clear that if the prohibited ground is not named in Bill 7, then there is no remedy for any person who is discriminated against on any other ground.

That therefore means that, to the extent that we do not extend the protection of this bill to other people who may be discriminated against on irrelevant grounds, we are condoning that discrimination. That is what worries me as we move into clause by clause discussion of the bill and why I want to take a few minutes to make certain that we understand that, because it will recur time and time again as we go through each clause in the bill.

When I am talking about the Bhaduria case, I am talking about the Supreme Court of Canada and about the unanimous decision of that court. There was not a single dissent. The Chief Justice gave the decision of the court on behalf of all of the other



judges, and all of them concurred in it. His conclusion is, "A refusal to enter into contract relations, or perhaps more accurately a refusal even to consider the prospect of such relations, has not been recognized at common law as giving rise to any liability in tort," which is the claim under which it would be phrased.

Translated into English, what that means is that the right to contract; and most of these freedoms relate to the right to contract, the right to equal treatment in services, goods and facilities, the right to equal treatment in occupancy of accommodation, the right to equal treatment in employment, the equal right to contract. All of the specific rights that we are talking about are very clearly stated, by the court, that unless they are in the statute, there is no remedy before the court. It is not limited to any particular form of discrimination; it simply says that there is no such other remedy.

Let me put it another way, in the words of the court. "The present case is not concerned with whether a remedy can be provided for an admitted right but whether there is a right at all, that is, an interest which the law will recognize as deserving of protection." They went even further. They said that in addition to that, where you have a remedy provided under a comprehensive system such as the Ontario Human Rights Code--and the court went to great length, several pages, explaining the comprehensiveness of the system--even then there is no way in which you can get to the court except through the processes of the human rights act.

8:20 p.m.

It expressly knocked down what many of us believed to have been a meritorious judgement of the court some considerable time ago, in 1945, which struck down the clause in a conveyance of land in Ontario which said that the land would not be conveyed to Jews or to other undesirable people. The court struck that down on the basis of public policy. This judgement made it very clear that, whatever the validity of that judgement, and that is not in question, it was not the proper ground.

It goes on to emphasize two things. First of all, it overrode the decision of the Court of Appeal of Ontario. It simply said the Court of Appeal of Ontario was wrong, that the judgement of the Court of Appeal of Ontario was based upon the preamble. It was based on other grounds, but the major ground that was upset by the Supreme Court of Canada was on the basis of the public policy set out in the preamble to the Human Rights Code. A valiant effort was made by that court in trying to uphold this woman's right to be protected in the courts, but that was struck down.

Then the Chief Justice comes to our responsibility. He said, "There is no gainsaying the right of the Legislature to establish new rights or to create new interests of which the court may properly take notice and enforce, either under the prescriptions of the Legislature or applying its own techniques if, on the construction of the legislation, enforcement has not been wholly

embraced by the terms of the legislation." If we do not do it, there is no other way it will be done.

We cannot kid ourselves in this committee that, no, because it is not here people will not be discriminated against, and if they are, they have got some other avenue to right the wrong; because the court will not admit under the common law that it is a wrong. That is not a criticism of the court. That is quite within the principles of the development of the common law.

The Chief Justice concludes, "For the foregoing reasons, I would hold that not only does the code foreclose any civil action based directly upon a breach thereof, but it also excludes any common law action based on an invocation of the public policy expressed in the code."

I do not think that we can move into the clause by clause discussion of the bill unless we clearly understand that we cannot get away from the catch 22. We cannot salve our conscience and say this is just a statute that is helpful to advance people's rights. This will determine their rights, and if it is not in the statute, unless you fall four square within the exact meaning of each of the prohibited grounds, then anybody in Ontario can be discriminated against in any of the areas that we are talking about under this code.

That responsibility is one where not a single member of this committee can hide behind either partisan politics or any view of a sort of collective party operation. This is something for which each member of this committee, and ultimately each member of the assembly, is going to have to accept their personal responsibility.

I want to make it quite clear that, up until this particular judgement on June 22, 1981, until this judgement was available, one could perhaps say, "We are not too sure about it and if it is not in here, maybe it is somewhere else; maybe they will be able to sue in the courts and be able to get some protection." The Supreme Court of Canada simply said there is no remedy in law for the offence of discrimination or the wrong of discrimination. There is no remedy unless you can find it in the Ontario Human Rights Code.

I do not intend to go on any longer. I trust I have made the point. For whatever it is worth, in the preamble to the code that was defeated yesterday, the very introduction of the words "without discrimination that is contrary to law" speaks directly to that point. If you cannot find it here, discrimination is the public in Ontario and will be said to be condoned by members of the public because the assembly did not deal with it. That is a responsibility which will recur time and time again.

Of course, when we come to specific amendments, we have a proposal--there are other proposals--as to how one avoids the strictures that this act imposes upon the limitations of the rights and that the Supreme Court of Canada has reinforced. These are not matters that are open to argument. For anybody to read the very simple language of the unanimous opinion of the court in that case, and come to any other conclusion, in my view, is impossible.

I was tempted to move the deletion of the preamble so that we would not be involved in hypocrisy, but the Bhadauria case has made the preamble irrelevant to the determination of anybody's rights and has made it irrelevant to that fine distinction that if the statute is not clear maybe the preamble can help. Not involving the legislative counsel, who is with us tonight, in the argument, you will recall that if there is any ambiguity in the statute you could refer to the preamble. There is no ambiguity in the statute, according to law, so the preamble has no effect. That is the end of my remarks, but it will recur again and again as we try to consider each of the provisions of the bill.

Mr. Chairman: Are there any other comments?

Mr. J. M. Johnson: Mr. Chairman, I would like, on my own behalf, to request the minister to respond to Mr. Renwick's statements. And I have some concerns that I would like you to address, sir.

Hon. Mr. Elgie: I might just broadly comment on the issues that Mr. Renwick has raised. Let us all understand, as members of this House, that there are certain rights created under criminal law statutes that prohibit certain activities by people--assault and a variety of other things. A remedy is created and one must follow the route of the Criminal Code in order to deal with those remedies.

Secondly, we have contractual obligations in society; for example, the right to quiet enjoyment of the premises we live in. If that is being interrupted, we have a contractual right before the courts to enforce that right we have in the accommodation in which we live. There are also, at common law, certain rights we have with relation to social interaction; for example, a slander, libel, and unjust dismissal. So there are a variety of laws, either at common law, in contract, or in criminal law, that deal with relationships between people.

In addition to that, the Legislature has, in its wisdom, legislated that there shall be certain rules and regulations, and a public policy relating to other areas of interaction between people in employment, in accommodation, services, facilities and contracts. They are established here.

8:30 p.m.

The Bhadauria case really revolved around the issue of whether or not a right created in the Human Rights Code also produced a parallel common-law right based upon a matter referred to in the Human Rights Code. The Supreme Court said it did not because the Legislature had created a right and had provided a remedy for any contravention of that right. That, to my mind, was what the Bhadauria case said. They said: "Mrs. Bhadauria, a right was created by the Human Rights Code. You had a remedy. You chose not to accept that remedy and that does not create a parallel common-law right."

All of the other comments are very interesting, but the fact is that was what the Human Rights Code was intended to do 30 years



ago, and that is what it still does. So Mr. Renwick may have his own views about it, and some of them are very interesting, but no one has ever tried to be hypocritical about the purposes or the functions of the Human Rights Code, nor is this Legislature trying to be hypocritical about them.

Mr. Renwick: I cannot let that statement go by. I am not going to argue again about it. I am simply going to read what the Chief Justice said. Each member of the committee can get a copy of the judgement, read it and make up his own mind about what it says.

Hon. Mr. Elgie: First of all (inaudible) obiter dicta.

Mr. Renwick: Not obiter dicta. Let us not reduce this to the extremities of a minute legal argument between lawyers.

Hon. Mr. Elgie: I agree with that.

Mr. Renwick: "For the foregoing reasons, I would hold that not only does the code foreclose any civil action based directly upon a breach thereof, but it also excludes any common-law action based on an invocation of the public policy expressed in the code." But there is no civil remedy in Ontario for discrimination on any grounds unless you can find it in the Ontario Human Rights Code.

My conclusion from that is quite simple: That discrimination for grounds other than stated in the code is permissible in Ontario and if we, as a Legislature, permit any group in society not to have the protection of this code, then we will have condoned that kind of discrimination and affirmed its lawfulness.

It is only because the minister has a habit of provoking me that I interjected again. Thank you, Mr. Chairman.

Hon. Mr. Elgie: It is a mutual problem we have with each other actually, Jim.

Mr. Chairman: That mutual problem aside, are there any other comments on the preamble? Shall it carry?

Agreed to.

Mr. Chairman: Part I.

Mr. Renwick: Mr. Chairman, I do not know how you want to proceed. There are a number of amendments. I do not think it is a matter of who gets in first. Unless there is some reason not to, I would move the next amendment we have, which is available to all the members of the committee.

Ms. Copps: I would suggest that according to protocol, it is the government who moves first, the official opposition second and the third party third.

Mr. Chairman: Just for the ease of the chair, because I am trying to work through with the other bill and the revised one as well, perhaps the government one could be moved, which then

will put me in tune with this, and then we will accept all the opposition amendments.

Mr. Riddell: Ms. Copps is right though. We normally entertain the government amendments first and then if the official opposition has amendments, we deal with those secondly, and then the NDP amendments thirdly. I would suggest we follow that procedure.

Mr. Chairman: Yes. I assure everybody we will get them all. I have no objection if that is the way you wish to proceed.

Mr. J. M. Johnson moved that section 1 of the bill be amended: (a) by striking out the words "in the enjoyment of" in the first and second lines of the section and substituting therefor the words "with respect to," and (b) by striking out the word "family" in the last line of the section and substituting therefor the words "family status."

Mr. McNeil: Would you mind explaining what you mean by that?

Mr. Chairman: Part I, that is subsection 2 that you are talking about, is it?

Mr. J. M. Johnson: No.

Mr. Chairman: Part I, section 1? I do not have the right one, then. I am sorry.

Here it is. Okay.

Is there any discussion on Mr. Johnson's motion?

Hon. Mr. Elgie: Mr. Chairman, if I could just explain the purpose of that amendment. It really was to bring all of the sections in line with some common language. Secondly, it was our view, as we reviewed the bill, that equal treatment, for example, in the occupancy might imply to some that one had to be an occupant before--I know we are on service and goods, but I am just using the other as an example--it might refer only to situations, for example, where someone already had the accommodation, and "with respect to" broadens it so that it applies to applications for accommodation and applications for employment.

Secondly, in the term "family status," the word "status" is added simply to bring it in line with the term "marital status" and for no other reason.

Mr. Renwick: I just have the one question. Is there a subsequent inclusion of a definition of something called "family status"?

Hon. Mr. Elgie: Yes.

Mr. Renwick: There is later on?

Hon. Mr. Elgie: Yes.

Mr. Renwick: My view is that the amendments proposed are improvements in the bill, and I certainly support that amendment.

Ms. Copps: I have a question about the addition of "with respect to." You are dealing with it in the issue of accommodation; but how does it specifically relate to the delivery of services and whether--

Hon. Mr. Elgie: Let us take an example of the offering of insurance. We frankly had some concerns that might refer only to once you had in the insurance contract, and not to the offering of it, for example.

Ms. Copps: Okay.

Mr. Chairman: Any further discussion?

Motion agreed to.

Ms. Copps: I have some amendments if there are no other amendments from the government members, relating to section 1.

I am having a difficult time hearing, with all these conversations going on. I am sorry, it is just that everyone is talking so quietly tonight.

The first amendment that I would like to introduce would apply--maybe you can correct me procedurally, but I should deal with it simply in section 1, although I have indicated sections 1, 2, 4 and 5, with respect to the substitution of the words "and access to" after "equal treatment in." Can we deal with it as a whole, or do we have to break it down into each individual section?

Mr. Chairman: Normally I would think we could deal with them as a whole very easily, unless there is objection to that from any member.

Mr. Renwick: I have no problem with dealing with that amendment in section 1, section 2(1), section 4(1) and section 5; that is, the addition of the words "and access to."

Interjections.

Mr. Chairman: Which one?

Ms. Copps: "And access to."

Mr. Chairman: The second one?

Ms. Copps: I do not know what order you have them in but I am giving them in the order I feel they should be in.

Mr. Renwick: I cannot say that, in a blanket sense, each time we--

Mr. Chairman: I agree. We shall go one at a time; but if there is the odd one that you think is agreeable, such as this one--



Ms. Copps: So you would agree to go ahead with "and access to" as a package then?

Mr. Chairman: I would, unless there is an objection. If anybody is lost doing that, then speak out and we shall go back.

Ms. Copps moved that sections 1, 2(1), 4(1) and 5 be amended by adding the words "and access to" added to after "equal treatment in."

Ms. Copps: In speaking to the amendment our motivation which specifically requests the inclusion of "and access to" is to ensure to the handicapped population of this province, to whom the bill is supposed to be particularly directed, that they will receive the kind of protection they deserve.

We have some concerns as illustrated in the minister's statement yesterday, that the bill in its present form will serve only to remedy a problem after it has reached the situation of going to a board of inquiry; and we have very serious concerns that this is going to create a confrontational climate between employers, who are out there in the market and possibly considering employing the handicapped, and prospective employees.

8:40 p.m.

As the legislation sits presently--without this amendment--it has no teeth, and in fact an employer may be in a position, even when it is a low-cost or no-cost accommodation, to deny employment to a prospective handicapped employee, simply because that person does not have access to the premises.

The way the legislation is presented, without the amendment, that would be perfectly legal and acceptable. We believe that the spirit of the Ontario Human Rights Code, as revised and as reflected originally in Bill 100, when it was introduced into this Legislature some years ago--the notion behind the changes in the Human Rights Code--was to allow greater accessibility to the employment market for the disabled.

As we know, from our own personal and family experiences, the role of the handicapped in the community is becoming greater every day; they face monumental problems in the employment market and they have the highest unemployment of any interest group or particular identified group in our province; and unless we can modify the legislation to include "and access to," we are effectively producing legislation that has no application in reality.

If I can refer back to the comments of Mr. Renwick when he was talking about the decision of the Supreme Court, with respect to Bhaduria versus the Board of Governors of Seneca College of Applied Arts and Technology, again we find ourselves in this situation.

Unless "access to" is guaranteed to the disabled community--bearing in mind the notion that, under bona fide circumstances an employer can always refuse a prospective

employee, and bearing in mind future amendments which we will be proposing which will suggest reasonable accommodation when it is a low-cost or no-cost proposition and when there is no significant financial hardship to an employer--bearing those conditions in mind, we think it is critical that "equal treatment" and "access to" be endorsed as a principle in this legislation.

I believe that, from the government side, if the question of access is not guaranteed--particularly in section 1 relating to services--if this notion is not enshrined in the code, then all the work that we have done and all the briefs that we have entertained from representatives of the handicapped community, will be for naught--because in effect the legislation will not be applicable until there has been a finding of discrimination by the Ontario Human Rights Commission.

I do not think the commission was set up to develop that kind of a confrontational mentality between the disabled community and employers, or between the disabled community and landlords, or access to public facilities in general. I think the code has been set up as a principle which we would like to see followed, in developing the direction in which we would like to see our society go; and I think that, with the notion of "access to," guaranteed under sections 1, 2(1), 4(1) and 5, we will in fact be saying to the disabled in this province that, "Yes, we are enshrining your rights in a human rights code; we are not giving you any special rights, but we are granting you equal rights, equal treatment in, and equal access to, the kinds of goods, services, employment and accommodation that is already accessible to the rest of our population"--bearing in mind again the critical condition that they must be low-cost or no-cost modifications which will not cause undue financial hardship.

We want to create here a climate of conciliation, and a climate of reciprocity, rather than a climate of confrontation; and I think that the inclusion of the words "and access to" will go a long way towards creating that climate and enshrining that principle.

Mr. Chairman: Okay. Further discussion?

Mr. Renwick: I am sure Ms. Copps has no illusions about the importance of this. She has emphasized it extremely well, particularly in relation to the question of employment, which is so crucial to disabled persons.

I should like, just for a moment or two, to talk about it in relation to another question that I and others have been concerned with for some time, and that is, under section 1 of the bill, dealing with access to public transportation, which of course, is a service covered under section 1 of the bill, to which everyone is to be entitled to equal treatment, with respect to the service, without discrimination because of the various stated grounds including handicap.

The policy of the government has been set out on a number of occasions on this question. It basically is hostile to the

adaptation of existing public transit to the needs of handicapped people and provides specifically more for subsidies for auxiliary systems of transportation such as, for example, subsidies to school boards to provide transportation for handicapped or disabled school children; supplemental transportation payments to physically handicapped people in the province receiving disability pensions; WCB payments to injured workers for transportation; home for aged program allocations for buying and operating special buses to transport residents.

The number of dollars allocated is quite minimal concerning the size of the province. In 1975 the Peat, Marwick study for the Ministry of Transportation and Communications estimated the total size of the provincial handicapped population at something over 150,000 in cities over 10,000. Those living in cities with established transit systems numbered 129,000 odd.

The statement of government policy, is quite clear from the position taken by Minister Snow in a letter from him to Metro Chairman Godfrey, considering the availability of provincial money to support the cost of making the proposed Scarborough LRT line totally accessible and I quote:

"I am convinced that Ontario is following the most appropriate course of action in investigating specialized systems rather than totally accessible systems, operated by themselves or in addition to a specialized system. In my opinion, a separate system offers a superior level of service to the disabled at a much more reasonable cost. I would therefore not favourably support the expenditure necessary to make the Scarborough LRT line totally accessible."

It is very strange that every time we run into this question of equality, with respect to people who are not quite equal, we try to establish that one that was so traditional in the United States, sort of "separate but equal."

Or, in Mr. Snow's case, of course, separate but better, so that you really get better transportation if you are handicapped than if you are not. The logic of it escapes me, let alone the incapacity of the government to fully understand it.

Let me just quote from a "barrier-free, surface transportation terminal designs consideration" done for the urban transportation research branch of Transport Canada in December 1978. I am not going to quote it all. They use this argument that the cost would be exorbitant.

It goes on to say: "There seems little doubt that inclusion of design elements in new construction would ensure barrier-free environments can incrementally increase cost. However, analysis indicates that the additional money necessary for such construction is relatively small. In some cases it can actually reduce overall costs. In fact, the two most costly transportation solution studies, Retrofitting BART and The Washington Metro were carried out for 1.6 per cent and one per cent of total cost respectively."



Well, there is a lot of information available with respect to this question in Metropolitan Toronto. We had a debate in the assembly about access for handicapped people; no question of the building codes. I particularly refer my colleagues to the mayor's task force report re disabled and elderly, dealing with access and a number of other items when David Crombie was the mayor of the city of Toronto, which is a fine study of all of the problems which are involved in it. The information is voluminous, the argument is cogent and the need for it seems to me to be total and absolute.

8:50 p.m.

Anybody is quite free to borrow the file and read the facts and figures relating to the question of the need to provide and to recognize the validity of the specific amendment which Ms. Copps has put; not only with respect to the particular section that I have dealt with but also, naturally, with respect to occupancy, employment and the other grounds stated in her amendment. We would certainly support that amendment.

Mr. Chairman: Mr. Minister, do you want to comment?

Hon. Mr. Elgie: Yes, I would, Mr. Chairman. I think the government feels pretty strongly that what a human rights code should address itself to is attitudinal discrimination. I recall being at a conference on employment for the handicapped, sponsored by the Ontario Welfare Council, not too recently. Harry Halton, a very talented quadriplegic gentleman who is vice-president of Canadair and who designed the Challenger aircraft, made in a speech some remark that I think is very appropriate tonight: that if attitudes change, the rest seems to fall in place.

I have to tell you quite frankly and honestly that I think attitudes is what a human rights code should deal with. I do not think we should be looking at barber shops in Huron county and a variety of other businesses and accomodation that people have owned or built, not deliberately to discriminate against the handicapped, but simply because they were not, perhaps, as aware of the problems as they might be.

I think what we should be concerned about is that if it is being done deliberately, the Human Rights Code provides a remedy for that kind of attitudinal discrimination. I do not say this in any way other than to tell you that I am not alone in those views, for that is the same approach that has been taken by the federal government in employment, even though they do not give their board of inquiry the power to order corrections. Even with the undue hardship clause they simply give the power to recommend. Nor does the Saskatchewan Legislature give its human rights commission any power other than when discrimination is found to deal with the matter so long as it does not cause undue hardship.

I cannot quote him exactly, but I recall the then Minister of National Health and Welfare, John Munro, commenting on that bill in the House. He said that surely the function of a code was not to provide a human rights commission with the capacity to rebuild buildings and structures and so forth. I happen to believe

that we have a moderate, receptive element in society with regard to the problems of the handicapped. I say that after travelling this province and meeting with employers and speaking to them in many cities, as have members of my staff. We are not running into that kind of viewpoint. We are running into receptiveness.

If members are really concerned about conciliation, I have to tell you, then, if there is no attitudinal discrimination, I think employers and others would be interested to know that there are federal government grants to correct access problems, that there are provincial grants related to vocational rehab and to WCB in order to arrange for access and other amenities.

I think it is a great opportunity to let people know what there is for handicapped people in society to make life what it should be for them. I do not think we need to go beyond the issue of attitudinal discrimination in a bill such as this. I think that is the way my colleagues feel and I think that is the way the government feels.

Mr. J. M. Johnson: Mr. Chairman, I would just like to comment and support Dr. Elgie's position because I feel it would be an impossible burden for many small business people to put in this type of facility. The principle is fine, but in some of the smaller communities there are old stores that are built with three or four steps in front, second floor accommodation for a law office and so on. It is impossible to install an elevator, or even to change the front of the store to accommodate a ramp.

We would be creating more of a problem by the adverse reaction people would take to this type of legislation. I fully support the presentation by the minister pertaining to these three or four sections.

Mr. Eaton: I would like to direct a question to the minister about some of these small businesses. Some of them are in buildings that they might rent. Who would be considered to be responsible in a case like that, the person running the store or owner of the building?

Hon. Mr. Elgie: That is the very issue I am talking about, Bob, the issue of who did what for why. Surely the issue we are really trying to get at is whether it was done or they are there in order to discriminate against handicapped people. If they are not--and I am not cynical about people in society--I think they would be interested to know that there are funds available that would allow them to correct those situations. That is certainly the reception that I perceive around the province as I go and talk to people.

Mr. Renwick: I just wanted to make the point that the straitjacket that the minister's bill puts us in leaves us no leeway. This is the constant and continuing problem. It comes up time and time again.

I only refer to the fact that in British Columbia, the Human Rights Code there tried to deal with the matter in a different way by having, first of all, a specific statement that no person shall

deny to any person or class of persons any accommodation, service or so on, customarily available to the public, unless reasonable cause exists for such denial or discrimination. It left some ambit for the attitudinal changes that the minister is talking about and the financial stringencies to meet somewhere along the line, and have some vitality and life towards moving for equal access.

The failure to put this amendment in the bill will simply mean it denies that kind of development, and it is the ongoing development that I am particularly interested in. Without trying to pre-empt the matter in a later amendment, if it is not amended by someone else, we will be trying to broaden the fundamental nature of the bill to give some scope for that kind of development.

The minister's statement precludes it by categorizing attitude as being important and leaving the whole question of whether or not it occurs upon financial considerations of government rather than on an express statement by the Legislature of rights of people. I do not criticize Mr. Snow, he has financial restrictions to live in, but the statement that he made with respect to LRT reflects a fundamental attitude and that attitude is not in favour of equal access to the same facilities.

Hon. Mr. Elgie: Nor does it speak of wanting to discriminate, I might add.

Mr. Riddell: Mr. Chairman, I sense that the member for Middlesex (Mr. Eaton) was giving some considerable concern to the amendment proposed by Ms. Copps, and rightfully so, because we have in our riding a wheelchair victim who is very vociferous about the inaccessibility to him of public buildings such as municipal offices. Bob has been at meetings which I have attended where this man speaks his mind. He is most annoyed to think that he cannot gain access to many of the public buildings, let alone to some of the privately owned buildings.

It is for this reason, I suppose, that Ms. Copps' amendment is supportable. On the other hand, I can see where it would affect small business as well.

9 p.m.

The thing that bothers me is that if a case of discrimination is argued in the courts, the lawyers cannot use, as a basis for their argument, the intentions of the committee when they are dealing with this legislation. Ms. Copps mentioned that we would not expect small business to make their places accessible to the handicapped if the cost were exorbitant. The problem is, when this gets into the courts the lawyers do not even refer to what the intentions of the committee members were. So, the cost aspect of it would probably be totally ignored. That is the thing that bothers me.

I can understand the terrible frustrations that many of the handicapped people have when they try to gain access to public buildings, municipal offices and what have you, but on the other hand, I think we have got to be awfully careful that we do not put



a burden of expense on the small businessman. It is a problem that you have to weigh on both sides.

Ms. Copps: One of the things I think we should all bear in mind and which I tried to make clear in my presentation--maybe I failed to do so--is the issue of low-cost or no-cost accommodation. I propose that it be built into the legislation so that it will certainly not be the vagaries of the committee that will determine what is low-cost or no-cost accommodation.

If we think back to the presentations that were made by various groups, there is precedent for a similar reasonable accommodation, low-cost, no-cost, accessibility clause. If you recall the figures that were presented to us by the office of contract compliance in one of the United States, the most expensive renovation or accommodation was something in the neighbourhood of \$3,000, the least expensive was zero, and of the accommodations that were presented, the majority fell between zero and \$300.

There will also be built into the legislation a clause whereby, if the accommodation would provide undue financial hardship for an employer, it would be not reasonable to assume that the accommodations be carried out. For the minister or one of the members to suggest that we are talking about making accessible a second-storey walkup in a small town downtown area, I do not believe that that is the intent of the modification. Nor do I believe it would be the intent of the low-cost, no-cost clause, which would specify that the accommodation would not cause undue financial hardship.

We are also dealing with situations where, in many instances across the province--and I think Jack pointed it out full well when he pointed to many of our public buildings--we have very large corporations which operate offices, factories, service plants and warehouses that are not accessible, and which in many instances would be accessible simply by the introduction of a low-cost or no-cost ramp. If this committee is truly committed to making employability a possibility even in the distant future, even if this legislation is adopted as I see it, it is certainly not going to solve all the problems tomorrow.

I agree with the minister that it is a question of attitude. I am not presupposing any malice aforethought on the part of any employer, but I also think that attitudes are shaped by the Legislature. If I felt that I was here in the Legislature simply to follow public opinion and not to lead it, I do not think I would be doing my job. I think that we are chosen to come here, as leaders in our community, to stand up for the things that we believe in, whether or not they are popular or unpopular, and I think in this instance we cannot rely simply on the goodwill of all involved. We have to lay a framework down where we say that where the cost is not an unreasonable burden, and where it is a no-cost or low-cost renovation, we feel these changes should be made.

I note the reference to the Quebec courts and the Quebec Human Rights Code, and to the fact that the Quebec Human Rights

Code does not have the authority to make a finding. I would counter that with the argument that according to Mr. Roy, who came here from the Quebec Human Rights Commission, any person who feels there is an infringement or a human rights violation in Quebec has the opportunity, concurrently or separately, to go through the human rights commission or directly to the courts. That is a right and a privilege which does not exist in this present code. So to say that the Quebec Human Rights Commission is somehow less powerful--in fact, the whole discussion of whether the assessment of fines should be done in the courts is a very moot point.

I think the fact that the Quebec Human Rights Code has said: "We are laying down certain guidelines. If you have problems beyond that you can take it and pursue it in the courts, at any level," is a laudable approach to the question of enforcement of human rights legislation and it gets you out of the confrontational domain into the conciliation domain. I believe that if you go back to Mr. Roy's statements when he came to the committee, well over 90 per cent of their cases were mediated and I believe some three per cent actually went to court.

We are dealing with a situation here where equal access to would be qualified very explicitly by the inclusion of, number one, a low-cost or no-cost accommodation and, number two, in situations where it would not cause undue financial hardship. There is legislative precedent for it. We can cite the figures. The figures, in fact, were presented during the hearings over the last few months, so I do not think we are asking someone in a second-storey walkup to put in an elevator. I mean that would be totally unrealistic.

I think what we are saying is that as a general principle where there is not undue financial hardship, we would endorse the principle that companies provide access. And do not forget, many of the people we are talking about are looking for access to buildings which could be defined as major public buildings.

I am sorry to say that when we are talking about government attitudes I have to have some questions about a government that brings in an Ontario Building Code that does not allow for general universal accessibility of buildings built after 1981. Obviously when you are talking 1940 or 1930, we have to be reasonable. People did not think in those terms at that time.

We should be looking at low-cost or no-cost changes now where it is possible, where it does not cause undue financial hardship, and we should also be looking at universal accessibility when it is a well-documented fact that the per capita cost is one half of one per cent if you are making buildings accessible upon construction.

I would ask the committee to bear in mind that we are looking at no-cost or low-cost accommodation and that the question of undue financial hardship would be left in the hands of the human rights commission, which would be able to determine where an employer felt that he or she was unduly put upon as far as a question of accommodation goes.

Mr. Stokes: Mr. Chairman, I would like to ask the minister a question. In the event that Ms. Copps' fears and Mr. Renwick's fears become a reality, that because of the way in which this legislation is framed it does not cause the attitudinal change you hope for, how would you frame delegated legislation or regulation which would probably be your right under this law to effect the necessary changes?

I can appreciate what Mr. Riddell and Mr. Eaton have said having just come from a jurisdiction where they keep their legislation to a minimum and rely on trust and the attitudinal changes you hope for as a result of amendments to this very important act. In the event that the bill goes through this committee and the Legislature without these sort of specific safeguards this amendment would provide, how would you see yourself, as a minister, saying these attitudinal changes have not been brought about as a result of the legislation as it is presently constituted? What would you recommend by way of regulation to cover it?

Hon. Mr. Elgie: First of all, if I might just comment on Ms. Copps' remarks, I never referred to the Quebec legislation. I referred to the federal government and Saskatchewan. Actually Quebec legislation has two separate components to it, one is the Human Rights Code, which is really a charter of rights, and the other relates to access issues which are totally unrelated to it. Within that they deal with the various types of buildings and reserve the right to give exemptions. So it is a very complicated bill.

9:10 p.m.

Really, it is almost like putting the building code in the hands of a separate group outside the human rights commission there and they cannot make orders with regard to access. Mr. Roy confirmed that.

Neither can we, Jack, under this bill, pass regulations with regard to access. I happen to think that it is not a hope about access. Ten years ago in this city you did not see half of the accessibility that we see now. But beyond that, although I know there are some criticisms about the building code and so forth, you have to agree I hope, that gradually there are an increasing number of new buildings that are required to have access provisions in them. I would believe that that overall policy about increasing accessibility through the building code--in combination with the human rights code which should deal with attitudes--so stating. I think that the things we all want will come about that way.

Mr. Renwick: May I ask the minister a question? Why could not the view which you express not be accommodated by accepting the amendment and relying, as Ms. Copps has pointed out, on the section 38(2) later on in the act with respect to the board making a finding?

I will be more precise. Let us assume that the access amendment was introduced into section 1 of the bill. Let us assume



that the Toronto Transit system is faced with a claim that equal access is being denied to a person who is handicapped. Let us assume that the matter goes through the commission and it goes to a board of inquiry and we come to section 38(2) that "where a right is infringed..."

Let us assume the board finds that the right has been infringed and that the contravention is on the ground of a handicap. "The board, in addition to an order under subsection 1"--and so on--"may make a finding as to whether or not..." and goes on to deal with the question of "unless the cost occasioned thereby would cause undue hardship and subject to the regulations, order the party to take such measures as will remove the obstruction and provide the amenities or any part of them as set out in the order."

Would not that way of dealing with the question be, in fact, the signal from the government of an attitudinal change, but recognizing the reality of costs and recognizing the particular situation which is involved in it. Because in a sense, that is the route you have taken with respect to employment, in a degree. It would seem to me to be a very clear, direct and simply way of dealing with what is the obvious fact, that is, the denial of access.

Hon. Mr. Elgie: Jim, for me and I guess for the government, the issue is whether an employer or whoever, be it under services and facilities, accommodation or whatever, if the mere fact that where they are does not at that moment in time have access should, in itself, be discrimination. That is what you are really saying--that a board of inquiry should have the right to say that the absence of access, whether it is low cost or whatever, is in itself discrimination.

Now, is that an accusation which you think that the moderate people in society that generally support human rights could accept? That they would be subject to that complaint, not because they wanted to discriminate against the handicapped but simply because they were present and occupying a building for example that had been built some years ago?

I have to tell you I think that would not be to the benefit and to the advantage of the handicapped. I think in this type of legislation it is important that we deal with attitudes, as I have said before, and that we not give people in society--who I do not think have the least desire to discriminate against the handicapped; they just do not know enough about them. I am talking as a physician who has dealt with them. They just do not know enough about them.

The thought that you are suggesting, that because they, for instance, rent or own or operate a business in a building that is inaccessible, it is a ground in itself for laying a charge of discrimination and for opening them up to the possibility of a conviction for discrimination, I have to tell you would not be, in my view, to the advantage of the handicapped. I think most members would agree with me.

Mr. Renwick: A brief response to that is simply that a person who is handicapped is therefore denied the opportunity in many cases of exercising the rights that we propose to give them, in a large number of instances without anybody having any malice about it at all, is denied the access question.

Surely, even if one made certain that the question of being found in contravention was clearly seen to be not a question of moral approbation or disapprobation if it was only based on the question of the accessibility and the cost factor, I think a large number of people would accept that as a very reasonable way of beginning the long process of adapting presently in-place facilities for access to--I was thinking particularly of transportation but it applies across the board, but it would start the process. It would be an indication that, for future reasons, you had better provide the access.

Hon. Mr. Elgie: I guess it narrows down to part of your remarks where you said that most people would accept it. I think that is true and I think that is the importance of this approach, that the conciliation process would give people an opportunity to come to understand the problems of the handicapped without being subject to a formal carrying of a complaint to a board of inquiry and without an order being issued before a board of inquiry with the problems that that may or may not create for people who have not been guilty of attitudinal discrimination.

That is my view on it. I really cannot add any more to it.

Mr. Renwick: The commission cannot do anything about it because it can only deal with matters which are discriminatory practices that infringe rights under the act. There is no way in which there is any public forum for attitudinal change.

The argument has gone on too long. It seems to me that on the real balance of what we should be about in the Legislature, that we should ensure the access and curtail it only to the extent of the unreasonable nature of the costs which are involved.

Mr. Lane: On the same point, I personally would hope that access would be available wherever and whenever possible, but Ms. Copps was using continually the phrase no-cost and low-cost. There is no such a thing as no-cost today and there is damned seldom low cost. If you change anything it is going to cost money, so let us not kid ourselves about low cost.

Ms. Copps: Just on that point, the no-cost accommodations are many that are documented through the office of contract compliance in the United States. There were a few things--for example switching shifts in the situation of a person with diabetes or something like that--that would be between two employees who would agree to change shifts to accommodate one person's necessity to keep a regular schedule or something like that.

Mr. Lane: You are not talking about access then, you are talking about something--

Ms. Copps: The whole question of reasonable accommodation looks at low-cost and no-cost accommodation in a number of areas relating to the disabled. That was one, shift changes and that kind of thing, whereby it would be a no-cost change but it would require two employees to change it.

Mr. Lane: I thought you were talking about the construction of a building now. That is why I said it would be impossible to have it no cost.

Ms. Copps: Unless you made it yourself, which I have done.

Mr. Chairman: Are you ready for the question? Just so that everybody understands, we are voting here on this amendment as it applies as to sections 1, 2(1), 4(1) and 5.

Motion negatived.

9:20 p.m.

Ms. Copps: The next thing we are going to be proposing in sections 1 through 5 is the amendment of inserting after the word "handicap" the words "political belief."

Does everyone have a copy of that amendment?

Mr. Chairman: Is there any objection again to dealing with this as it pertains to all of the sections, 1 through 5, in one? Does that cause anybody at all any difficulties if we do that?

Mr. Renwick: It is simply the single insertion of "political belief."

Ms. Copps: The copies unfortunately were filed with the clerk.

Mr. Chairman: They were all handed out and I asked at the start if everybody had them.

Ms. Copps: I do not want to talk too long to this amendment. I think that the arguments were well exhausted by a number of parties, including the Ontario Federation of Labour and other groups who came before the committee, who felt that in situations where people are fired simply because of their political beliefs--and there was a situation cited to us in Nova Scotia, for example, when there was a government takeover, the whole government hierarchy was turned over.

I think one of the concerns that may be expressed by people, and I think it was expressed in the committee, is when it deals with people who are at the deputy minister or at the policy and planning level. There certainly is some involvement with the government in some political continuity or lack thereof.

So it would be my contention that the bona fide clause would cover those kinds of situations, whereby it may be imperative to change employees on the basis of political belief.



But I think we want to enshrine the general principle that people should be entitled to have their political beliefs, without being fearful of not obtaining a job; or of being fired from their jobs; or of being denied accommodation or access to service, simply on the basis of political belief.

It is certainly a principle that has been enshrined in our society for a long time and I think to spell it out would be a very positive thing.

Mr. Riddell: I think that will carry.

Mr. Chairman: I am sure there is no difficulty with that.

Mr. Renwick: I perhaps do not worry much about the exception that Ms. Copps refers to. I found the position taken in the Symons report, Life Together, was a pretty good position, if my recollection of that report is correct, on the question of political beliefs.

Myself, I think that this distinction which is always raised between people in senior levels of the civil service is a misunderstanding of the problem that is created at the time, say, of a change of government or a change of the party in power.

I think that fundamentally boils down to the normal law of employer and employee. That is a question of fundamental loyalty. If the person in the job finds that he cannot, consistent with his loyalty, reconcile his political beliefs, then his job is to quit. There are lots of examples of that.

I cannot conceive that--even if the Liberal Party were ever to achieve the government of Ontario--there would be any wholesale dismissal of the senior civil service. But I can also be quite certain that there are well-known members of the senior civil service in Ontario who would find in such circumstances that their fundamental political beliefs were inconsistent with the loyalty which they would then need to serve their so-called new masters.

I do not worry about having to make these subtle, exclusionary distinctions about it. Everybody in our society is entitled to have his personal political beliefs considered as a matter of irrelevancy, in relation to the services in a restaurant, or his right to get on the public transit system, or his right to rent accommodation and, indeed, his right to employment. I did want to make the distinction.

I do not mind dealing with this particular amendment, as Ms. Copps, on behalf of the Liberal Party has put it forward, dealing with sections 1 to 5. But I would really like to know from any member of the Conservative Party who is here, or from the minister--what conceivable grounds would there be to discriminate against a person, in connection with the right to equal treatment, with respect to services, goods and facilities.

I know that there may be some--maybe in the Albany Club, where, perhaps, I would not be welcome, but then there is a special provision dealing with that private club. But when you

actually stated not to put political beliefs in section 1, and certainly not to put political beliefs in section 2, dealing with accommodation, dealing with the right to contract and such questions as that, it seems to me to be not only irrelevant but it is ridiculous not to provide that protection.

I happen also to think that it should be equally extended in employment, which for many people is the most important aspect of the protection that this bill would provide, in relation to political beliefs.

I do not think it is adequate to say nobody would ever deny anybody in McDonald's a Big Mac simply because he happened to belong to the Tory party. But, that is the kind of problem that you run into. Come down to the McDonald's in my riding and that is likely to happen.

Hon. Mr. Elgie: We have a lot more confidence in McDonald's than that.

Mr. Renwick: But I would ask the minister to respond to that question: why was it decided not to put it in all of the clauses?.

Hon. Mr. Elgie: Jim, there are a variety of reasons, and the first one being, if you read the Symons report, Life Together, there is kind of an interesting comment--and I have not got it in front of me. But really in essence, as I recall it, it said something to the effect that although we did not find any real problem with regard to political belief in the province, perhaps it is a good idea to put it in.

What we really have to ask ourselves is are we out to legislate in relation to problems which exist, or problems that we perceive may exist some time? Our view is once problems present themselves in significant ways in society, then you deal with them.

I might also say that I have not read the Hansard, but I would be interested to know why Saskatchewan did not include political belief in its human rights code. I have not had the opportunity to read that. There must have been good reasons why they chose not to.

There are something in the neighbourhood of four provinces that have political belief, and British Columbia, as you know, has the "unreasonable cause" provision. Out of that has come a realization that there are distinctions about the definition of it. There is political opinion; there is political belief; there are political practices and each has its own vagaries and complications.

I might say that it is our view that when there is no problem in society which one can identify readily, perhaps one should not be addressing issues when there are no problems. But going beyond that, those of you who have read the charter of rights will realize that the federal charter has expressly dealt with the issue of political belief in the context of a nation; and perhaps if it is an issue to be dealt with, perhaps it is an issue

that should be dealt with on a national basis. But certainly this government's view is that there are a variety of legitimate concerns people have, and let us be quite frank, our own government, for example, has a philosophy that is well expounded in the Public Service Act that civil servants are expected to be neutral in terms of political activity. It is not our wish to change that. As you know, this bill has primacy over all other legislation.

9:30 p.m.

Mr. Stokes: But not belief.

Hon. Mr. Elgie: Nor do I know of any place where political belief is hindered.

Mr. Stokes: You would give them freedom of thought.

Hon. Mr. Elgie: Yes. No problem with that.

Mr. Stokes: That is what this says.

Hon. Mr. Elgie: I have never known it to be hindered, Jack. I only tell you that as I wander around the civil service of this government and see the brown envelopes, I do not think there is any inhibition with regard to political belief in this government.

On those grounds, Mr. Chairman, the government would oppose that amendment. The members of my caucus may wish to have further comments in this regard. I do not know.

Mr. Renwick: Perhaps I should disclose my interest and refrain from voting.

Hon. Mr. Elgie: It is not McDonald's, I know that, Jim.

Mr. Renwick: On an anecdotal basis, no names, no pack drill, but when I joined the New Democratic Party, I was, of course, asked to leave the law firm which I belonged to, so I have a significant interest in indicating to you and to the committee that it is not some ethereal view--it certainly was not in my case--and that is the problem which happens everywhere.

For the great bulk of the people it is not a problem. For the person to whom it happens, then it is significant. I am not going to comment whether that was not one of the best things that happened to me in the circumstances or not.

Hon. Mr. Elgie: Both of you may have benefited, Jim. You never know.

Mr. Renwick: I cannot speak for them.

Mr. Stokes: I am just wondering, Mr. Chairman, if this amendment ever passed, whether or not the member for Middlesex might have cause to grieve.



Mr. Eaton: Why?

Mr. Stokes: He was denied the portfolio of the Minister of Agriculture and Food.

Mr. Eaton: Oh, no.

Ms. Copps: On the point of the minister, with respect to political belief, both the federal and the provincial civil service make it very clear that a political belief certainly cannot be acted upon, and I think that is an infringement of a right.

Mr. Riddell: Mr. Renwick has indicated a personal experience that he had. I cannot say that I have had a personal experience, but I have had experiences related to me, one just today, where a person who wishes to apply for a certain position called me. He said, "I understand that politics has been very much involved in the past and I am just wondering whether I should be coming to you or whether I should be going to the Conservative member."

Hon. Mr. Elgie: I hope you gave him the right advice.

Mr. Riddell: He happens to reside in my riding. In another case, a victim of this Thalidomide drug who applied for a position here not too long ago had all the qualifications, was turned down and she came to me. I pursued it with the Ontario Human Rights Commission.

It is very obvious to me that in that case politics also played a part because I feel reasonably sure I know the politics of the person who was selected. So, it is just unfortunate that Mr. Elgie has not had some of these experiences related to him, because I am going to tell you it is a fact. When you see a girl coming into your office who has no arms but is able to do with her feet practically everything that you can do with your arms, and has all of the qualifications in the world, and she is turned down for what I suspect to be political reasons, then I think you would be prepared to support this amendment.

Hon. Mr. Elgie: To suggest that I would not be concerned about someone who had no arms because of Thalidomide is really a little bit strange because that sort of problem is one that I have dealt with all of my life. You are not saying that you can confirm anything, Jack. These are your speculations.

Mr. Riddell: I checked into it thoroughly. I went through the Ontario Human Rights Commission and the argument given to me seemed to be a very weak argument and when I asked if they would mind telling me who got the position, then it became very plain to me.

Hon. Mr. Elgie: That is a pretty serious accusation against the Civil Service Commission and I do not think you really mean it, because if anybody understands that commission, my friend, they know that they really are independent.

Mr. Riddell: I am not laying the blame on the Ontario Human Rights Commission, I am simply telling you that the human rights commission went to the employer and got the information; the information was conveyed to me; and inasmuch as they maybe did not expect there were any politics involved, knowing who my constituents are, I suspect that there was.

I cannot confirm it, no. You are absolutely right. I cannot confirm it. But I suspect it.

Mr. Chairman: Any further discussions or questions? I would just remind you that we are now voting on this amendment as it pertains to sections 1 through 5.

All in favour of the amendment? Opposed?

Motion negatived.

Mr. Boudria: Mr. Chairman, the next amendment we have to propose is in sections 1 to 5.

Mr. Chairman: Mr. Boudria moves that each of sections 1 through 5 inclusive be amended by inserting after "handicap" the word "language."

Mr. Boudria: As you may remember, Mr. Chairman, l'Association canadienne-française de l'Ontario, ACFO for short, and l'Association française des conseils scolaires de l'Ontario have been in front of this committee and have made a representation on this topic. I will not go on at length to describe all the things that they have mentioned to you here. You have obviously heard them all and the minister has heard them as well, or his parliamentary assistant. I would think to spend 15 minutes just reiterating it would perhaps be unnecessary.

I would just like to take a moment, Mr. Chairman, to cite to you a portion here of an editorial in today's Ottawa Citizen, a very learned newspaper, of course. The editorial is called, "Mocking Human Rights." I will just read the last paragraph of it to make it brief.

"With an increasing number of racist incidents in this province, Davis is taking steps to demonstrate his government's support of newcomers to Canadian society. That is commendable, but the cruel irony is obvious. Davis will turn his party's policies inside out to welcome new Canadians, but he will not recognize the special rights of francophones. The former is important for future growth of his party; the latter is important for the retention of the Conservative base it already enjoys."

It is a belief of many of the constituents I represent, Mr. Chairman, and I do think that failing other steps that could be done by this government, such as the acceptance of article 133 of the BNA Act and so forth, certainly this Human Rights Code could be made in such a way as to demonstrate the goodwill of the government of this province, vis-a-vis its francophone population, and for that matter, vis-a-vis its ethnic population as well of other languages.

Mr. Renwick: Mr. Chairman, I do not have any difficulty with the proposed amendment, other than to ask the mover of it if he would indicate what the limitation or the reasonable restriction might be in the case of employment if the language of employment and communication therefore within a firm, is not facilitated by the person who speaks the other language.

I have no difficulty, in other words, with the question of the right to contract, the right to equal treatment in occupancy of accommodation, the same with respect to services, goods and facilities and all of those questions. But would there not have to be in Ontario, in relation to employment, some reasonable limitation? I could not find one in the existing act that would appear to be applicable under section 21 which deals with the limitations on the rights under section 4.

9:40 p.m.

Mr. Boudria: I call your attention to section 10(a), "the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances." I think it is obvious that no attempt is being made here to force a company to hire somebody who cannot speak English to work in an English milieu. I do not think this is at all what anybody is attempting. Of course, it would be ridiculous to say that is what is attempted.

Again, going back to the presentation that ACFO made, I am sure that you will recognize that francophones in this province have been discriminated against on many occasions, if for no other reason than the one of putting the emphasis on the wrong syllable, which is something that is easy to distinguish when people like myself speak; for some it is even more obvious. I have managed to say a few words in the English language, although some journalists in certain editorials have questioned my ability to speak the language at all on occasion. Nevertheless, although some people may be able to be heard and understood, they are often discriminated against because they come from a different group, which is identified by their accent if by nothing else.

I am sure that members of this committee whose ancestors have come from other countries may recognize that they or their parents have been discriminated against because they came from countries in Europe. I see one member disapproving.

Mr. Havrot: Never had a problem.

Mr. Boudria: I am glad that he has never had a problem. I certainly hope that it was the case with all new Canadians in this country, that they felt they had never been discriminated against because they happened to have, not a visible difference from other groups, but one which distinguished itself when they spoke.

Mr. Renwick: I just want to make a comment: I have solved the question I raised, not under section 10 but under section 21(6)(b). On the basis that the addition of the word "language" in that clause would permit it to be "a reasonable and bona fide qualification because of the nature of employment," on



the assumption that words such as that would be applicable in the case of employment, I certainly would quite wholeheartedly support the amendment proposed by Mr. Boudria.

Ms. Copps: I am glad we have that situation cleared up, because I think the issue of bona fide exemptions can be applied in any number of the prohibited grounds of discrimination. They have been well aired in our past discussions.

I did want to back up some of the points that Mr. Boudria made in his presentation. On the issue of language per se, we thought that it would be necessary to spell it out specifically, although we do feel that in the inclusion of those areas--for example, race, ancestry, place or origin, ethnic origin, citizenship, et cetera--the government, in including those areas as a prohibited ground of discrimination, is saying, "Yes, we feel that all people in this province are to be treated equally with the exception of people over the age of 65 respecting employment and a few other areas like that."

The inclusion of language per se has been requested by a couple of groups, one being ACFO and the other being l'Association francaise des conseils scolaires de l'Ontario. One of the groups, if you remember, specifically requested the inclusion of two official languages. The other group suggested that perhaps just a general cover of language would be sufficient to illustrate the commitment this province and this government have to the protection of language rights for all minorities; more specifically one of our founding nations, but also other minority groups who have come to this country as landed immigrants.

I think we have already said, in sections 1 through 5, that people of ethnic origins different from our own are to be protected under the act. We are just carrying that one step further by saying that language should be an enshrined right in the Human Rights Code except where, under bona fide circumstances, we must discriminate--for example, in employment.

We have already included the questions of ethnic origin, ancestry, race, et cetera. By including language we are making a distinction, particularly for those French-Canadians who may not be seen to fall into one of the proscribed categories of ethnic origin, ancestry, et cetera, because basically they were the first people who came to this country. They are Canadian citizens. In that context they should be covered.

On the issue of language, it has been evident in this province that to date there has not been a commitment to language rights, particularly with respect to one of the two founding peoples. It was in an effort to enshrine this in principle in the Human Rights Code that we have introduced this amendment. There is enough precedent for it already supported by the government in its inclusions of ethnic origins, citizenship, race, ancestry and place of origin. Including language would serve to protect a certain group of individuals, the French-speaking community, that is not presently protected under that specific area of language rights.

Mr. Lane: I would like to point out that I attended a conference last week where there was representation from 43 different countries. There were all races, origins, colour, et cetera. Everybody spoke English and there was no feeling of discrimination and no call for interpreters. So it seems to me that we do not have a problem.

Hon. Mr. Elgie: What this government's position has been is well understood. Even members of the official opposition in debates, as I recall--and my colleagues can correct me--have paid tribute to the way this government has provided services throughout the province, where numbers warrant, in the areas of education and courts. Indeed, I think there are many who say that if one looks at the progress that has been made, other provinces and other areas should look at us as an example, rather than being critical of us.

Certainly the Premier of this province (Mr. Davis) was in the forefront in making certain that that very principle was present in the charter. So this government has no reason to feel that anyone should in any way feel that there is any discrimination, apparent or real, in this government's activities in that area. Most people who look at it thoughtfully feel that we are providing services in the dual languages of this province very adequately.

Mr. Renwick: I was not specifically thinking of the French language in relation to my own riding, but certainly in a polyglot riding such as the Riverdale area, I would be very much concerned--assuming, of course, as I do, that my interpretation of the court is right--and I would not want anybody in my riding discriminated against in respect of their ability to receive services, employment, accommodation or to contract because of language discrimination.

I take Mr. Boudria's amendment not to refer to some requirement that the service be provided necessarily in that language. It may well be that that is the effect and it may well be that you have to put some qualification on it.

On the philosophical position which you take, Mr. Minister, on attitudinal changes, it certainly would be very upsetting to me if any ground of discrimination existed in my area based upon language for the purposes set out in the first five sections of part I of the bill.

Hon. Mr. Elgie: I have to comment on that because I too have a riding with a very rich multicultural background. I do not think there is anybody in that riding who does not understand that place of origin and ethnic origin are deliberately inserted there for those very reasons.

9:50 p.m.

Mr. Boudria: Mr. Minister, you have made an interesting comment when you indicate that place of origin, ancestry and ethnic origin are definitely in there to protect a situation as it occurs in your own riding. However, again referring to the

Franco-Ontarian issue, I do not think it is very easy to describe those people as having a different ethnic place of origin and citizenship.

You were talking about people that have been here in some cases for 250 years. It would be very difficult to say that those people are of a different origin. They are Canadians and have been such for, in some cases, longer than anybody else. Certainly, if the words "ethnic origin" and "place of origin" require special consideration to protect constituents such as the ones you have in your riding, Mr. Minister, or as the ones who live in Mr. Renwick's riding, I think that it would be in order to ask for similar wording to protect constituents who do not fit into this kind of description, but yet may be discriminated against without that wording being inserted.

As to the general principle of your stating all the advances that have been made for the protection of francophone rights in Ontario, I will be the first to admit, sir, that, of course, progress has been made; I am not denying that. However, as you also know, there are still places where improvements are in order.

I have written a press release this afternoon, asking the Minister of Health to intervene in a matter involving psychiatric patients at the Brockville Psychiatric Hospital. Whereas 35 per cent of them are unilingual French, out of 847 employees there are not even 10 who can speak French to those patients.

So, on the general principle of what a great job the government is doing there, I recognize that there has been advancement. But the job is not finished, and let us not believe for a moment that it is.

Mr. Chairman: Is there further discussion on this amendment? Are you ready for the question? Again I remind you that we are dealing with this amendment as it pertains to sections 1 through 5.

Interjection.

Mr. Chairman: Each of these sections 1 through 5, inclusive, is amended by inserting after "handicapped" the word "language."

Motion negatived.

Mr. Riddell: You look like a bunch of penguins.

Mr. Havrot: So are you. You are consistent too.

Hon. Mr. Elgie: Jack, you are not leaving, are you? Stick around for this one.

Ms. Copps: Well, I guess the next amendment is the one we have all been waiting for with bated breath. I think you probably have copies of just section 1, and then sections 2, 3 and 4, et cetera, dealt with separately. This is the issue of sexual orientation.



Mr. J. M. Johnson: Do we skip the other amendments that we have before that section?

Hon. Mr. Elgie: It is still section 1.

Ms. Copps: Yes, it is still in section 1.

Hon. Mr. Elgie: Let's see your independence here, Jack.

Mr. Chairman: Sorry, Ms. Copps. Could you just run through that?

Ms. Copps: Okay. The amendment, as moved, refers to section 1.

Mr. Chairman: Ms. Copps moves that section 1 be amended by inserting after "sex" in the fourth line "sexual orientation."

Ms. Copps: When I had a chance to review some of the documents that were very thoughtfully prepared by the research department, it came as somewhat of a surprise to me, and I think probably most of you as well, that among the groups and individuals who appeared before the committee to talk about the issue of sexual orientation, the overwhelming majority of briefs were submitted in defence of that position. I think if you took the time to tally the pros and cons, it is approximately 18 to three in favour. Included in those 18 we have representatives of the Hamilton Conference of the United Church of Canada, along with many other groups and individuals.

With the permission of the chair--I don't know whether this will be in order--I would like to read some excerpts from a letter which was prepared for perusal by the committee tonight by Arnold Bruner, who has just completed a study on the relations between the homosexual community and the police. I have copies of the letter if you are interested in going through it. I would like to read certain excerpts to give the committee perhaps another unbiased opinion before we go into this very crucial vote.

His letter is dated October 27, 1981, but Mr. Bruner released it into my care to give to the committee at the appropriate time with respect to the amendment. I might also add before I go into it, I have also been contacted by the National Conference of the United Church of Canada, who will more than likely be presenting a letter of support prior to the committee of the whole. Unfortunately, their general meeting was not to be convened until early November. They have contacted me by telephone to indicate that they will be sending, hopefully, a letter of support that will be presented to the committee of the whole.

Mr. Havrot: Excuse me for a minute, Mr. Chairman, for a point of clarification. Are we dealing, right now, strictly with the amendments of the Liberal Party?

Ms. Copps: Yes.

Mr. Havrot: What about the NDP amendments? Are they included in these votes?

Ms. Copps: No, they are separate.

Mr. Havrot: So we are going to deal with those, which are practically identical as far as I can see. This is what I was just wondering about. We are going to go through the motions with the amendments of the Liberal Party, and then go through the almost identical amendments of the NDP.

Mr. Renwick: On a point of order: I know Mr. Havrot has difficulty understanding the process. No, we are not going to repeat the arguments that are made. We are not intending to put our motions. For example, on the question of equal access I noted on our amendment, "Defeated; same as Liberal amendment." We will not be placing the identical amendments.

Mr. Havrot: As long as we understand that, Mr. Renwick, fine.

Mr. Renwick: It is not a question of my understanding it, Mr. Havrot. It is a question of your understanding it.

Mr. Havrot: No, Mr. Renwick. I must tell you we have gone through these committee hearings many times where we have had duplication, for hours and hours, with amendments brought in by your party and by the Liberals.

Interjections.

Mr. Chairman: Order. As long as the chair understands it, we are not going to deal with two amendments if they are the same. In fairness, where I recognize parallel amendments coming in, I try to provide equal opportunity for those people to speak.

Mr. Stokes: Once members learn the process, they begin to be more amenable to this whole process.

Mr. Chairman: I think the point has been made and answered. Please continue, Ms. Copps.

Ms. Copps: Mr. Arnold Bruner recently released a study of the relations between the homosexual community in Toronto and the police. He has taken the time to write a letter to the committee in which he states: "Of particular interest to the Legislature and this committee, in particular, in its consideration of Bill 7, in my view, is the section of the report entitled, 'The Ontario Human Rights Code'..."

"The point of these sections is that the omission of sexual orientation as a prohibited ground for discrimination is a serious shortcoming in the proposed new Human Rights Code. This conclusion is based predominantly on information and impressions gathered during the study"--and he goes on to quote at length the position of the Metro Toronto Police Association president, Mr. Paul Walter.

He further states that, "The condonation of discrimination against any group in our society by Ontario, the province that introduced human and civil rights legislation to Canada, shakes

the very foundation of the principle enunciated in the preamble to the code," et cetera.

"The continued upholding of this principle deserves the highest commendation. But to do so for the benefit of many groups in our society, and at the same time withhold protection from a specific minority group, is a form of discrimination that serves to mock the principle.

10 p.m.

"My study, which had no partisan political view,"--and I might add for those of you who may not know, at one time Mr. Bruner served as executive assistant to the then Minister of Education, Mr. Davis--"no special interest, nor any bias except a strong leaning toward human rights, discovered no rational reason for the omission of sexual orientation from the proposed Ontario Human Rights Code. One can only conclude that the decision is a political one--most probably based on a perception that inclusion of sexual orientation is opposed in some quarters.

"Surely there is opposition. There is opposition as well to the very existence of legislation as a shield against discrimination. Ontario has a proud history of balancing such opposition against the more urgent requirement for social justice. It is appropriate, in this connection, to recall that the late Premier Leslie Frost in the 1950s faced strong opposition to human rights legislation in his own cabinet. With characteristic political courage and motivated by strong feelings for anybody who is in the underdog position, Leslie Frost introduced a series of legislative measures that laid the foundation for our present Human Rights Code.

"That code, introduced by his successor, former Premier John Robarts, in 1961-62, served as a model for the human rights legislation adopted by all other provinces and the government of Canada. Human rights legislation has evolved over the years in Ontario, in the United States and in other provinces of Canada. The human rights codes of the cities of New York and San Francisco and the province of Quebec, for example, now include sexual orientation as a prohibited grounds for discrimination. This has been official policy, as well, of the city of Toronto since 1973.

"The bill under consideration by the committee marks the first significant revision of Ontario's human rights legislation since 1974. The proposed revisions go further toward protecting more groups in the underdog position than at any previous time. But on this, the twentieth anniversary of the Ontario Human Rights Code, they fall short of protecting the homosexual community from arbitrary dismissal and refusal of employment, housing and public services.

"In the interest of giving the full measure of meaning to those splendid words that underlie the principle of the Ontario Human Rights Code, the times call once again for political courage. Therefore, I respectfully call on the committee to give serious consideration to the findings and conclusions of the above-mentioned sections of the report on relations between the



homosexual community and the police. Members of the committee, I wish you well in the execution of your important task."

I would like to point out that earlier in his comments tonight the minister did state that he preferred to view problems that present themselves rather than to get into various elements that may be a problem. I think he was speaking with respect to the question of the inclusion of political belief as a prohibited ground of discrimination. As I understand his interpretation at that time, he did not want to see the inclusion of political belief because he did not feel that it was a problem and he preferred to "view problems that present themselves."

For those of us who have spent many long months, first of all, struggling with the question of the inclusion of sexual orientation as a prohibited ground of discrimination and, secondly, have spent many months listening to the briefs and presentations by many people who have come before this committee and who have in some instances come forth and come out of the closet for the very first time in their lives, I think we have all felt the difficulty of the question.

If we refer back to the question of the teacher who appeared before the committee who had been a closet homosexual for a number of years until he was forced out of the closet after being involved in the bath house raids in Toronto, I believe he came to the committee, not because he was seeking special rights or had a particular political axe to grind, but because he felt that for the first time in his life he was able to speak out about his situation.

I think we can again go back to the question of whether or not we are in a position at this committee level to create a society where everyone is treated equally. By specifically excluding sexual orientation among other areas as a prohibited ground of discrimination, we are saying that, yes, it is legal to discriminate against a certain segment of society. In percentage terms, I think it has been said that the homosexual community across the country represents approximately 10 per cent of the population; so it is probably fair to consider that some members of the Legislature probably fall into that category.

I do not feel that whether or not we support the lifestyle is in question here. I think what is in question is whether every person in this province should be allowed to seek employment, to be employed and to seek housing without fear of retribution simply based on sexual orientation. I think there has been a great body of evidence presented to the committee to show that in many instances, more specifically the John Damien case, but in many other instances that were cited to us in the duration of the committee many homosexuals in this province live in fear of losing their jobs or being driven out of their homes.

The fact that of approximately 700,000 to 800,000 homosexuals in Ontario, only some 8,000 to 10,000, which would represent a very small percentage, are actually vocal supporters of gay rights would indicate that the majority of homosexuals themselves have not been able to come out of their closets. If the

intention of this society is to allow the creation of a climate where we do not believe in discrimination against group, whether we may or may not agree with their ideals, we may or may not agree with their principles, we may or may not agree with their political beliefs, we may or may not agree with their religion, we may or may not agree with many elements of every person who walks down the streets in Ontario, then we are not being asked to agree with their lifestyle, but we are being asked to give them a fair chance to jobs and to housing in this community and in this province.

I do not think it is going to be an easy thing for any member of the committee. I would hope that the poignant comments of some of those who have come before the committee have been able to convince us that we have to create a climate of tolerance in this community. I think we could refer back again to the medical arguments, the physiological arguments, the social and psychological arguments, which would say--and I think any social psychologist or any sexologist would say--that a person's sexuality is usually established long before they ever enter school.

If you want to get into a question of why is a person of a particular sexual orientation, I do not think that is what this committee is all about. I think this committee is here simply to say that although it may be politically unpopular, although it may not necessarily get us votes back in the home riding, we believe in creating a climate of equal opportunity for every person in this province and we will not tolerate legalized discrimination.

Basically, that is what we are talking about in this instance. We are talking about legalizing discrimination on the basis of sexual orientation. We are saying to people out in the community, "You cannot discriminate against someone because he or she is of a visible minority, you cannot discriminate against someone on the basis of their ethnic origin and you cannot discriminate against someone on the basis of their sex, their gender, but you can discriminate, you can fire someone simply because they are homosexual and you can deny someone accommodation or you can throw them out of accommodation simply because they are homosexual."

If what you want is legalized discrimination, then I guess you have no option but to defeat the amendment. But if you do--and I believe that most of the members of this committee, including members of the government and including the minister do--endorse the principle that this society should have equal opportunity for all, then I really do not think we have any other choice but to support the amendment. So I would urge all of you to take that into consideration.

10:10 p.m.

Mr. Renwick: Mr. Chairman, I am not going to repeat what Ms. Copps has said. I associate myself with the arguments and positions which she has stated on the issue. I would like, however, to speak to a different facet of the question, that is, that it is not a question that if we pass this amendment we are

condoning a lifestyle. It is that we are condoning discrimination, if that amendment is not passed, on the grounds of sexual orientation.

But I want to speak to a deeper question. How can we, as members of the assembly, perpetuate a fear amongst other members of the community who happen to be members of the homosexual community, the fear that they are always going to be subjected to the possibility of blackmail? I want to draw the attention of the committee to the McDonald commission and what it had to say about this specific question of homosexuality. There are some people who believe that somehow or other the question is unreal and that the fundamental nature of the fear of blackmail does not exist in our society any more. I think it is all in volume one. I am not going to worry about the specific references and so on.

The first reference simply states: "In 1955, a royal commission report in Australia and two US congressional committees indicated that the Communist intelligence services were relying upon the exploitation of the vulnerabilities of individuals rather than their ideological principles. Homosexuality was a form of behaviour thought to be particularly vulnerable to blackmail. Compromise techniques, followed by blackmail and attempted recruitment, had been used by the Soviets against several homosexuals in the Canadian government. As a consequence of this change of tactics by the hostile intelligence agencies, the RCMP Security and Intelligence Directorate began a Canada-wide program of collecting information about homosexuals."

It then goes on to refer to the suicide in Egypt of the Canadian ambassador, Mr. Herbert Norman. We all know the tragedy of that case and the tragedy of the other case--the name escapes me at the moment. It came out in the course of the McDonald commission with respect to the circumstances of the death of a person in a motel, I believe, in Montreal while under interrogation by the RCMP.

Later on in the report the McDonald commission picks up the same question and says: "As we noted earlier,"--and that is the quotation to which I have referred--"there has been a concerted effort on the part of the security service for over two decades to collect information on homosexuals. This program began as a result of reports in the mid-1950s that the Communist block intelligence services were involved in operations to recruit homosexuals with access to classified information.

"By the last 1950s, a seven-man team was established to investigate homosexuals in sensitive government positions. In 1960, a special squad of investigators was established to interview homosexuals in Ottawa not in the government. The security service in several other cities was also involved in investigating homosexuals. On the basis of interviews and morality squad records, the security service had, by the 1960s a fairly thorough knowledge of members of the homosexual community.

"Because of the effectiveness of these investigations, the teams of investigators were gradually reduced. Although in 1969, an amendment to the Criminal Code made a homosexual act in private



between two consenting adults no longer an offence, the security service continued to collect information intelligence on the homosexual community. The security screening branch of the security services became responsible for homosexual investigations. There is now one member of that branch responsible for writing security reports on homosexuals and for directing the occasional field investigation."

It goes on to indicate quite clearly the position which they have and requests that, unless there is a direct security connection because of the threat of blackmail, those files be destroyed.

How can we, as a committee--and I think it is fair to say that our knowledge of the historic consequences of homosexuality with respect to vulnerability to blackmail has been the subject, not only of life incidents that everyone in the room must be aware of, but numerous depictions in novels, in stories and in films to illustrate the reality of the fear which exists in the homosexual community of being disclosed as such.

People can say the times have changed. For the large bulk of the community that are homosexual the fears have not changed. If we cater and pander to the continuance of this fear in our society, we, by saying openly and quite clearly, "You cannot discriminate against people because of homosexuality," are removing a great blanket of fear which pervades that community.

It is all very well to say: "Oh, no. This is the 1980s. It is not the 1950s or it is not the late 1800s in England." But the fundamental question is the vulnerability of people in our society to blackmail, fear, or coercion of one kind or another, or intimidation because of that particular lifestyle or attitude about sexual matters.

I am simply saying, to those who think that it does not exist, or to those who think that people who are members of the homosexual community do not have a fear about the consequences of the disclosure that they do not happen to conform to the prevailing cultural mores of the society, I say that is wrong. The excerpts from the McDonald commission pose very dramatically the kind of fear which we can lift from a large number of members of the community.

Because, regardless of the other characteristics which are part of the security or the intelligence screening process of the Royal Canadian Mounted Police with respect to drinking habits and character defects of one kind or another, the specific reason for the vulnerability of the homosexual community or person was with respect to the fear of blackmail. That was the trap that was used and was used very effectively against people in that community.

People can say that is not relevant to what we are talking about. I am saying that if we have the courage to accept this amendment, we will raise that fear--perhaps not totally, but to some real degree--from a large number of members of the community. I do not speculate about how many there are in the community. I have no idea of that.

But the facts are very clear. The fear is very real. The capacity of this assembly to answer that question is very positive and for us to shy away because, in some way, we will be taken as condoning a lifestyle, rather than protecting and raising the fear which is inhibiting people, seems to me to be so abundantly clear that I would ask my colleagues to support the amendment.

I would ask that the amendment not be put this evening, if that is agreeable to the chair, because I know my colleague, Mr. Johnston, will want to speak to it next week. I appreciate Ms. Copps giving me an opportunity to speak because I will not be able to be here next Wednesday.

Mr. Chairman: There are several other speakers who want to speak on the subject. Do you have any idea of what that bell is?

Mr. J. M. Johnson: It is my understanding it is only a five-minute bell for stacked votes.

Mr. Chairman: Is there any objection to adjourning right now?

Interjection.

Mr. Chairman: What is today?

Clerk of the Committee: Today is Thursday.

Mr. Chairman: Thursday. We will adjourn till eight o'clock Tuesday evening.

The committee adjourned at 10:19 p.m.

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Publications

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

BILL 7, HUMAN RIGHTS CODE

TUESDAY, NOVEMBER 3, 1981





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Boudria, D. (Prescott-Russell L) for Mr Eakins  
Johnston, R. F. (Scarborough West NDP) for Mr. Stokes

Also taking part:

Elgie, Hon. R. G.; Minister of Labour (York East PC)  
Fish, S. (St. George PC)  
McKessock, R. (Grey L)  
Stevenson, K. R. (Durham-York PC)

Clerk: Richardson, A.

Researcher: Madisso, M.

Tuesday, November 3, 1981

The committee met at 8:13 p.m. in room No. 228.

HUMAN RIGHTS CODE  
(continued)

Resuming the adjourned consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I will call the meeting to order. We adjourned last meeting on an amendment by Ms. Sheila Copps that section 1 be amended by inserting after "sex," in the fourth line thereof, "sexual orientation."

I have lost my list of speakers but I do know that Mr. Boudria has reminded me on several occasions that he was next on the list to speak.

Mr. J. M. Johnson: Mr. Chairman, we had one representative of the Liberals and one of the NDP. Surely the rotation--

Mr. Chairman: Who did we have?

Ms. Copps: Jack Johnson was also on the list.

Mr. Chairman: I realize that. Mr. Johnson proceed.

Mr. J. M. Johnson: Mr. Chairman, I would like to express my strong personal opposition to the motion proposed by Sheila Copps. It is completely contrary to the political persuasion of the party I represent. I feel, speaking as a member from a constituency in rural Ontario, that it does not reflect the lifestyle of the people in the area. They have been brought up in an environment where they consider this immoral and completely contrary to their religious beliefs.

It is hard to rationalize that we should make a change that is going to interfere with what they believe is morally and religiously acceptable. For that reason, I cannot accept it in my own conscience. I have to uphold the convictions of my constituents. I do not believe this amendment would be in the best interests of the people of this province. For those reasons I cannot accept it.

I would like to express a concern about the question that Mr. Renwick raised regarding the threat that homosexuals have pertaining to blackmail. I would submit that this same argument could apply to heterosexuals, male or female. If they have a tendency to stray and get into areas outside of their marriage contract, then they too are subject to this same type of blackmail. I do not think any member of this committee would suggest we should bring in legislation that would protect these people.

For example, I think of the Gerda Munsinger case and possibly

even Senator Ted Kennedy's problem today. This is not a homosexual problem, but it certainly runs in the same vein that Mr. Renwick was discussing the other night when he expressed his concern for blackmail.

I think we should accept the fact that when you go outside the accepted practices in society then you place yourself in a position that could create a problem of this nature, whether it is your home life, your political life or your future in the community you live in. People have this decision to make and they have to live with their own moral principles.

There has been discussion about the problem of homosexuals in Metro, in Ontario and maybe even in this country. I had an occasion when I was in London, England, three or four weeks ago, to meet with an officer of the human rights commission and I discussed with him aspects of Bill 7 and how it related to their British human rights legislation.

I also asked him about the problems we perceived with the homosexual community and asked how it related to the problems they have in London, England. I was surprised when he mentioned that they did not consider it a major problem. Maybe I would be exaggerating to say that they did not consider it is a problem, but they have had homosexuals in the community as long as the community has existed, and no one will argue this.

He also felt that one of the problems that related to our concern here in Toronto, in his opinion, generated possibly from San Francisco and the vocal homosexual community of that city. Certainly the press, the media, have contributed to it by elaborating on the problems they have and, in certain cities, I can accept that there is more of a concern than in other areas.

As I mentioned, in London, England, a city of several million people, they do not consider it is a problem. I discussed it with several of the political people, including the new Social Democratic Party, the Labour Party and the Conservative Party. The only person I could determine seemed to feel it was a problem was the leader of the Labour Party on the London council, and he included it in his platform.

I asked what that meant and he said that the Labour Party leader was sympathetic to their problem. I asked if it went beyond that and he said not that he was aware of. While they expressed sympathy and recognized there was a problem, as far as he was concerned none of the other people that he had discussed it with felt it was a problem. This, naturally, does not apply to Ontario but it is something I thought was of interest. Maybe somewhere between the San Francisco problem and the London area, there is a happy medium.

I am not sure what the answer is, but I do feel I cannot support this because it certainly is not in the interests of the people I represent. It flies in the face of their beliefs for too many years and I just cannot, in good conscience, vote to support an amendment of this nature.



Mr. Boudria: Mr. Chairman, I gave this matter very serious thought when it came to my attention after the election. I cannot say that it was a very big issue in my rural eastern Ontario riding. As a matter of fact, the whole issue is practically unheard of in the area which I represent in this great Legislature.

Having said that, I cannot help but feel that what we have been asked to do, as legislators, here in this bill, is not to approve of somebody's lifestyle. It is not to say that we are in favour of somebody's lifestyle. I may not be in favour of somebody not being married, and we certainly are saying in this bill that we are not going to discriminate on grounds of marital status.

I may not be in favour of many other things that go on in society. The only thing we are being asked to do here is to protect the people of this province so they are not discriminated against. That is all that is being asked.

8:20 p.m.

I noticed the previous member was talking about the present situation in England. I do not feel this is a very good example, especially in view of a lot of the violence that is going on there now. I certainly do not feel this is a proper barometer to gauge what our legislation in Ontario should be like, because there is a lot of racial tension and all kinds of other tensions in Great Britain.

I do not think I would welcome that situation here in Ontario. I certainly hope we have the peaceful existence we have been having and, hopefully, with legislation such as the one that is before us, we can make our society even better, not worse.

This issue is not the most important one in front of this committee, but somehow it has managed to become the most controversial. When you consider all that is in that bill, it is really a minute part, when you consider all the groups in there, when you consider the handicapped, all the other things that are in there, all the different sections of that bill. Yet of everything that is in that bill, somehow that one small additional clause that is proposed here by my colleague the member for Hamilton Centre (Ms. Copps), has managed to create quite a bit of controversy.

I would like to suggest the reason why it created quite a bit of controversy is probably because that section was not in there from the start. Had that been in the bill when we started, everybody would have looked at the bill and said, "Fine, well, we cannot discriminate against anybody, I guess," and away we go. But the fact that part was not in the bill is what, in itself, created a lot of the controversy that exists.

We have heard that in Quebec they passed similar legislation and the sexual orientation aspect was included there. I do not even think anybody rose to speak for or against the thing. It just passed that way because it is not, as I say, the most important part of the bill. In my riding, it is even less important, if you wish, because of the particular constituency I represent.

As a legislator, I do feel it is our role to make legislation as fair as possible for everyone in this province. I respect the members who have told me they just could not support that because their conscience tells them it is not right to include that clause in it. I think they are wrong, but I respect their belief.

I happen to believe that although I do not approve of somebody's lifestyle, that does not give me the right to discriminate against them. I hope some members respect me for that belief. What I fail to understand is the people who are not in one or the other of these two groups. It is the people who know it would be right to put it in there but will not do so, because it is not safe ground to walk on and reasons like that.

I trust all the members of this committee, and all members of the Legislature when it goes in front of the Legislature, will vote on this as a matter of conscience. I know in our party our leader has told us to vote on that particular clause the way each one of us sees fit, to make this legislation reflect our beliefs.

I do not know what the stand is of your party, Mr. Minister. I hope it is the same and I hope it is the same in the New Democratic Party, because I feel--

Mr. Laughren: On all the bills or just this one?

Mr. Boudria: We are discussing that clause, not that bill, only that particular amendment. Obviously, we are political parties, but when it deals with a specific moral issue like this, not the greatest in importance but the greatest in controversy, I do feel we would be better off as legislators and as people, if we let our conscience dictate the way we would vote on this particular issue.

I mentioned before, I think, that the Conference of Bishops and all other groups--I know we have heard that some members have said it was against their religious principles and so on and so forth but, again, we are not advocating a behaviour, we are only recognizing an existing condition and trying to prevent discrimination against people. Because you do not like somebody's behaviour does not stop them from being people. They are still people and they deserve, as such, the best of human respect and dignity.

Therefore, I will in this committee and in the House vote in favour of the amendment proposed by Ms. Copps.

Mr. R. F. Johnston: Mr. Chairman, I support the motion presented by Ms. Copps. We had a motion prepared to present ourselves and would have done so if the ordering were different.

I do so for a number of reasons, not the least of which is that it is my party's policy, that it is a policy which was decided by a democratic vote at one of our conventions and I respect the democratic wisdom of my party.

I also believe the principle is just and I support it from a personal point of view. Our caucus will be voting as a caucus on

this issue. We are not going to separate this one out as a specific moral issue compared with other issues we have to deal with. We have made a decision in caucus that we will follow our party policy and that this is a just request. I find it somewhat strange that we pick and choose the moral questions from time to time in terms of what we vote on by conscience and what we vote on by party in this Legislature.

I have only heard the member for Wellington-Dufferin-Peel (Mr. J. M. Johnson) speak so far from the Tory caucus members on the committee, but throughout the hearings we held all summer this was the one issue that it struck me we had the least movement on, that people came in with their preconceptions. We had a lot of people come before us from both sides of the issue and even from points in between, I would say, in terms of the acceptability of this issue.

It is not one where there has been a movement, whereas on others I have seen us, as a committee, being swayed by arguments being brought forward. I regret that. I thought a number of the presentations made to us were very helpful in terms of trying to clear up some of the myths. One or two, I think, were highly provocative in that they came on in a fairly confrontation-type style and I do not think that was helpful to the committee and maybe helped reinforce some attitudes.

But I do feel we spent a long time on this bill. We are not finished by any means yet, being on section 1(1) at this stage, but this bill has been a long time in the coming as well. I can look back to the fact we have had several runs at this bill in terms of a specific bill being brought in for the handicapped and a lot of negotiations, since 1977 I would suggest, and the Life Together report, in terms of what shape this bill would finally take.

It has been a long time since there has been any major review of human rights legislation in the province and I am afraid it is going to be a long time before there is any further amendment, in any major form, to this legislation.

It is for that reason I would hope members of the committee would feel there is a real need for us to lead and not just to follow in this legislation. It is not our job to be behind the times but it is in fact a requirement of us, because it is long-term legislation, to be slightly ahead of our times, slightly more accommodating perhaps than other elements in our society.

8:30 p.m.

For that reason I would hope we would see fit to add several things to this bill to make it more progressive in my view, to make it more forward-thinking. It is not that we would be breaking huge new ground. I can look at some bodies of thought that are maybe thought to be quite conservative in their attitudes, including major labour bodies, in this province and in this country, which have passed resolutions at their conventions about sexual orientation which have not been reflecting the social mores or the sexual mores of the members of those unions by any means, but have been reflecting a total respect for civil rights.



There is the Canadian Labour Congress, the Ontario Federation of Labour. I could refer to many locals which have now actually passed clauses in their collective agreements to protect workers in terms of the issue of sexual harassment. We have the Quebec Human Rights Commission which has already added it to theirs.

It is not as if we are going to be the absolute ground-breakers on this but, as a society which I would hope is seen to be still one of the most sophisticated areas of our country and the most advanced, we would at least be among the first to move toward this kind of policy.

I think it is important we dispel one of the myths that has come up time and time again with us and that is this whole notion that to bring in inclusion for homosexuals of the same rights as the rest of us, in terms of their civil rights, that we are somehow taking away rights from somebody else. I really think that argument is specious, that it has no effect. When you give somebody else the same rights as you give yourself, you take nothing away from yourself and, in my view, we would add to our own steam if we did so.

We are not saying they should have rights which are special. We are saying they should have the right to hold a job without the threat of losing their jobs because of their sexual mores and their values. We are saying they should have a right to have an apartment or a house like anybody else and stay in a community without being harassed, that they should not be harassed on the job because of their private sexuality. I do not see how we can look upon that in any way as threatening ourselves.

It is much like the argument that, by providing access to bilingualism, one is taking away the right to speak English. That argument has always struck me as equally fallacious and I would hope we would see that what we are talking about here is not an endorsement of a moral set of values, but an acceptance that you cannot preclude a group in terms of civil rights because their values happen to be different from your own, unless those values go contrary to law in the province.

Even if you look at our preamble where I tried to convince the minister to change and to take out the contrary to law section, and you read this bill as, "having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and wellbeing of the community and the province."

It strikes me that, by giving the same civil rights to these other individuals as we expect for ourselves, we would be fulfilling that message in the second paragraph of our preamble and we would not be in any way demeaning our own moral values, would not be in any way calling into question what have been called the Christian values of our society. We would only be protecting the basic civil rights within our jurisdiction and that is what we need to be dealing with. We do not need to be dealing with the morality questions.

When the church people came before us, it strikes me they are the ones who have the mandate to speak to the moral questions and to speak in terms of those kinds of values. Even they were able to make distinctions, as the Anglican Primate was, between the moral values of the Anglican Church and, therefore, the unacceptability of homosexuality as a lifestyle in terms of the teachings, and the basic civil rights of those individuals to enjoy the same goods and services, et cetera, as the rest of us.

As has been pointed out a number of times, the Roman Catholic Church through its bishops made a different kind of representation to us. I suggest that they are struck with a different kind of mandate than we are. If we can accept the notion that marital status as it's redefined should be considered in this bill not to preclude the basic civil rights of an individual, even though there are people in this room who would disagree with the notion that a common-law bond is the same as or as morally valid as a marriage that has been sanctified by the church, then I think we can surely make the extension to understand that somebody whose sexual orientation is different from ours is also worthy of protection within our society and not try to make moral distinctions.

There is a danger, in my view, of our promulgating a kind of hypocrisy: looking at our own moral values, looking at some of our own behaviour--our own sexuality or our own drinking habits, perhaps, and other kinds of things that we as individuals may have--and then saying that somebody whose lifestyle is sufficiently different from our own would preclude him from the basic rights we would expect.

It strikes me that one of the fundamental precepts we operate on in our society is tolerance; it's one of the things that makes it work. I wish we would extend that precept to cover this group and not try to set up what may be a hypocritical distinction for them.

I was struck by some of the comments by people who made presentations. One young man made it very clear to us that in a lot of ways it's not a question of sexual preference, because sexual preference brings forward the notion of choice: the notion that somebody at the age of 14, 12 or whatever, as he becomes sexually aware, somehow makes a choice of whether he would prefer somebody of the same sex or somebody of the opposite sex. It strikes me that we were being told that the preference of those people was unmistakably self-evident to them; it was not something they sat down and intellectualized in order to make a decision. It's not something, if you could say so, that they could help.

Some people came before us and suggested that even if they did have this awkward inclination it would be all right as long as they didn't proceed and participate in it--that somehow that was unacceptable. I believe that was one of the arguments in the Catholic church's presentation to us.

But when one of those young men came before us and talked about what it was like to be a homosexual in the school system in Ontario and about the guilt feelings that were involved and the oppression he felt even though he knew he could not be other than

what he was, it struck me as incredibly unfair and inhumane that we would continue to set up, by this lack of action, if you will, by not accepting this amendment, the notion that somebody like that would have to feel guilty and wrong in our society all his life.

It also struck me because I have friends who, as older people, have come out of the closet in the last couple of years, people who have been living lives of self-deceit for many years. In one case a man had 25 to 26 years of adult life before he was able to admit openly that he was a homosexual. Because I know by talking to this friend about the kind of pain and torture he went through and the kind of humiliation he felt when he was confessing this to his friends, I really wish we would not perpetuate this sort of thing in the kind of values that we're setting down in legislation.

The question of blackmail has been raised by Mr. Renwick. It is a major problem, but it's a problem I would like to approach in a different way. Instead of talking about John Damien, the person in the racing commission who has been oppressed, I want you to remember that day when we had a man here who said that 10 per cent of the people in our society are homosexual, that 10 per cent of the members of the Legislature are homosexual, that, in fact, there is a homosexual member on this committee.

8:40 p.m.

I don't know if you remember the reaction to that very provocative statement. What immediately struck me about it was that right there by that statement it became so clear that such innuendo could be turned into blackmail, that that statement could have caused a witchhunt which could have caused a person's career to be ended, and that one of our colleagues with whom we have worked in good faith here in the Legislature--and many others, supposedly, if this 10 per cent rule is true--could be susceptible to losing his position through public pressure. And it struck me that that was the ultimate truth about this notion of blackmail and how insidious it can be.

A number of myths have been brought up before us about the propensity of homosexuals to abuse children. I'm hoping that the residue of that thought is not still prevalent in any of our members' minds. I thought there were a couple of good presentations on it that dealt factually with this concern and raised the concern we should all have about heterosexual child abuse in our society.

I want to talk a little bit about the question of whether or not we should just approve the idea of being homosexual and silent or being a person who would stand up and say he is homosexual, because that has come up time and time again. Even my friend the member for Riverdale (Mr. Renwick) has talked about the notion of perhaps having some kind of subamendment that would take away the notion of proselytizing. I think we just can't deal with that. People are what they are; they should not have to deny what they are, and if that becomes awkward for us as heterosexuals to accept then that is our problem, quite frankly.

I'm not interested in being barraged by the values of a gay activist, but I would never want to deny that person the right to



stand up and fight for himself and be proud of himself, just as any other person might be proud of his value system. I don't think we can try to take a middle ground in this. There is no middle ground. If it is a right we are talking about, then the right must be placed clearly and succinctly in a motion, as it has been in this amendment, and not in any way changed by saying, "You are all right as long as you don't talk about yourself."

It seems to me that that would be hypocritical, that it is not what we expect of any of the other groups we are talking about, whether they be people with a handicap, people with a record of offences or people who are not married but who are living with somebody else. We're not saying that those people cannot speak about themselves. But the notion that somehow homosexuality might be acceptable as long as people weren't able to express themselves, I think, has to be unacceptable to us.

Many members on this committee are from rural Ontario; I myself was raised in rural Ontario, and I guess it's true that I was not aware of homosexuality to the same degree as I am now until I came to the city of Toronto. But it's also true that many people who are homosexuals come to the city in order to find some kind of security, some kind of acceptability; and I think all of us know, whether we are from a small community or from the city, that we are acquainted with many people who are homosexual.

I like to think that the philosophy which has been prevalent in rural Ontario, the conservative values, if you will--I hate to admit this, Floyd, but they are prevalent in rural Ontario--have one aspect to them which I have always believed in and which I like to compare to the liberal philosophy, perhaps, of some of our cities, and that is that in the collective thought of conservative Ontario there has always been an acceptance of people who live in the community. And in the old days whether or not they were a little slow of mind or deformed or perhaps homosexual those people were accepted and allowed to have their place in the fabric of the small rural town.

I am given to think of the Robertson Davies trilogy about the Fifth Business and that notion of the acceptability of people who were not seen to be in the normal cast in their community. I hope members of the Conservative caucus who are from rural Ontario will remember that this was one of the strengths of that value system: an acceptance, a tolerance, even if it was not a condoning of attitudes.

I don't think any arguments can be made, Mr. Chairman, that will convince anybody, so perhaps I am talking to try, at least, to get it out one more time just in case it should have some effect on some of the members present. We will not be speaking to something that directly affects all Ontarians if we put in this motion--I agree with that; we will be speaking directly only to a minority group within our society. But I hope that, indirectly, we as representatives of the people in our society will be speaking to our approach as a government towards tolerance and acceptance of other people, towards their having the same rights we have, towards what this government will offer and what it will expect of its society and its citizens.

For that reason I ask the committee to support the motion from the member for Hamilton Centre (Ms. Copps) and add the words sexual orientation to part 1, subsection 1 of the bill.

Ms. Fish: Mr. Chairman, I understand that the committee has chosen to deal separately with the amendments that may come forward to clauses 1 through 5. The remarks I will now make in this debate on clause 1 will none the less cover some issues that I think might be appropriate both to this clause and to some of the other clauses, though perhaps some supplementary comment on the other clauses will be appropriate later.

I also speak in strong support of the amendment put by the member for Hamilton Centre, and I would certainly urge adoption of that motion. I do so for reasons that have been alluded to tonight and touched on a little bit but which I think perhaps bear some underlining.

The term lifestyle has occasionally been used in reference to sexual orientation or sexual preference. I would like to suggest that it is not lifestyle we are dealing with here, because lifestyle suggests a matter of choice.

I was struck, as I believe the member for Scarborough West (Mr. R. F. Johnston) was struck, by a presentation made by Peter Maloney, who came before the committee, spent considerable time discussing some recent studies that had been undertaken and made those studies available to committee members. The information he gave us suggested very strongly that sexual orientation, rather than being a matter of choice, was determined at birth, and that sexual preference, sexual orientation, is indeed not a matter of choice any more than a variety of other characteristics which we in society exhibit which are also not matters of choice.

I note when I look at section 1, where we speak about equal treatment in the enjoyment of services, goods and facilities, that we speak in some measure about characteristics people display which are matters of choice. We speak, for example, of things like citizenship, creed, marital status and family. For many these characteristics are indeed matters of choice. Yet on these elements of choice, where there might well be disagreement between and among us about the choice we would make or the choice we would prefer others to make, we none the less say that they are characteristics on which discrimination should be prohibited.

But I am also mindful, Mr. Chairman and members, that a number of other elements are noted in that section and in other sections that are not matters of choice. One looks at place of origin, race, ancestry, ethnic origin--these are not matters of choice. These are things that occur and people carry with them from birth. It seems to me that the information that was brought before this committee in terms of some of the more recent studies suggests very clearly that the question of orientation, like the question of ethnic origin, like the question of race, like the question of ancestry, is not a matter of choice. It is not something one can simply put by.

It is for that reason that I think it is important to move

away from terms like "lifestyle," because lifestyle, in my view, is a matter of choice. I would illustrate that by suggesting that there are heterosexuals who live as quiet tenants, who pay their rent regularly, who do not vandalize apartments and who do not have loud parties. There are also heterosexuals who default on their rent, who bash in walls, who have loud parties and are disruptive. The difference in the behaviour is a matter of choice and a matter of lifestyle.

The question of sexual orientation, of whether one is heterosexual or homosexual, is not a matter of lifestyle. It is another way of saying that there are people who can perform a job and perform it well to the great credit of the employer, be they heterosexual or homosexual. Equally there are people who will have chronic accident records, who will not perform on the job and who, in fact, deserve not to be continued. But it is rare, if ever, that one can correlate being a good tenant, performing well in a job or being qualified for the full enjoyment of good services and facilities in our society with questions that are not matters of choice.

Indeed, Mr. Chairman, we have moved in this section to point out that in those areas in our society where the characteristics that people display are not matters of choice, the focus of attention in protection of our human rights for the people of this province is a focus that should be their ability to enjoy the goods and services, their ability to be good tenants or good neighbours, their ability to participate in the community and voluntary service and to reach out, their ability to do the job with the requirements of the job, and no other grounds.

It was not long ago that women were prevented from even being interviewed for employment opportunities on the simple ground that they had children, on the assumption that because a woman had children, most particularly if she was a single parent, she could not be out working. I would point out that the matter of having children is now in our society a matter of choice. Yet still today in our society it is possible for people to be turned away from accommodation or turned away from employment or refused access to goods and services over a matter of sexual orientation, not a matter of lifestyle, not a matter of whether they conduct themselves in a dignified manner, in a manner that is a credit to the community, but over a matter over which they have no choice, any more than others in our society have a choice or we have a choice by virtue of any of the other characteristics that are part and parcel of our birth.

It is for that reason that I do not think the question of moral judgement even enters into this amendment. I can well understand where a question of moral judgement, where a question of values may well enter into a decision that is taken when the displaying of the characteristics are granted on choice. I can well see where someone may have a question on matters of citizenship or creed or marital status or family, because these aspects involve choice and because these aspects display values. But matters that are set at our birth, matters about colour, ethnic origin, race or ancestry, are not matters of choice. We have said for as long as this province has had a human rights code, those characteristics



people display, which are functions of their birth and are not subject to choice or change, are matters upon which we in the society will not discriminate.

I hope on that basis that members will recall the discussion on the evening Mr. Maloney came in and discussions subsequent to that, and will think carefully on the evidence that was submitted, will think in terms of the quality of protection that is reasonably provided to people by virtue of characteristics they display as a result of birth, not characteristics they display as a result of choice. I hope as a result of that, members of the committee will see their way clear to extending support for this amendment and thereby extending support in part I, section 1, as a ground to prohibit discrimination, to the question of one's personal sexual orientation.

Mr. Riddell: I have listened to practically every debate there has been on this, apart from Mr. Johnson's, and I am sorry I wasn't here for that. But I heard a very passionate plea from my colleague Sheila Copps, from Jim Renwick, Don Boudria and now Susan Fish, for the inclusion of sexual orientation. Not one of those people, to the best of my knowledge, has one red cent invested in a business where they are providing a service to the public. I was always taught that if you do not have any money invested in a poker game, it is very easy to tell somebody else how to play the cards, but if you are very much involved in the poker game, then the way you play the cards is either going to make or break you.

I will have something more to say about sexual orientation from the standpoint of employment, but from the standpoint of other services, I have listened to these passionate pleas, I have listened to these people say you are not taking rights away from anybody else if you are going to include sexual orientation.

What about the little old lady or the little old man who has a fairly large house? I am thinking of rural Ontario where you go into these towns and see some very large houses. This little old lady or little old man decides to convert that house into one, two or three apartments. She or he has certain moral standards, certain moral beliefs. Are you telling me that we should dictate to that little old lady or little old man who is prepared to make the investment of converting that house? Are you telling me that we are prepared to dictate to them as to whom they can rent those facilities to? Do they not have the choice, because of their moral beliefs, to deny homosexuals the right to live in those homes?

Where in the hell are we going in this society when we expect businessmen to risk capital? I am a farmer and I think I can safely say I have a quarter of a million dollars tied up in my farming operation. Do you think I want somebody to come along and tell me who I can or cannot hire? If indeed we are going to expect businessmen to invest their money and operate a business, we will have to be very careful about what kind of government information there is going to be.

Otherwise, I am prepared to throw up my hands and say: "Let the government invest in my farming operation. Let it give me a quarter of a million dollars and it can run the show. Then it can

hire or fire who it wants." As long as I am the guy who is risking that kind of capital, surely I still have some decisions to make as to who I want to help me operate that business.

9 p.m

I am not saying homosexuals should be persecuted, far from it. But I am saying that a person with moral beliefs has been taught that way. We have all received letters from people who have actually quoted scriptures out of the Bible as to what the thinking was on homosexuality. If a person has been brought up with that belief, who are we as a government to tell those people they will have to provide accommodation to a person regardless of whether that person happens to be so far removed from the beliefs of the owners of the apartment that it isn't funny?

There is the other side of the coin. As a farmer and a person who has come through the school of hard knocks, perhaps I am being a little hard about this whole thing. But until somebody comes along who has a quarter of a million dollars, or any kind of money, invested in a business, then I don't think they have too much room to talk about who should be provided accommodation or employment. That is my concern.

When it comes down to the provision of services, it is my concern that this little old lady and little old man who have houses and are prepared to turn them into apartments have a say as to whom they are going to provide that accommodation to. If you are not going to give them that say, they are going to say, "Fine, we will simply continue to live in this house. We will not provide accommodation to anyone." Then you are denying accommodation to three or four other persons or families, depending on the number of apartments these people are prepared to turn their houses into.

So why don't we allow some freedom of choice on the part of those people who have their moral and religious beliefs? If you are going to take those beliefs from them, you are taking fundamental rights away from those people that they have had over the many years they and their predecessors have been living. I fail to see why we are imposing these hardships on business people who, unlike Sheila Copps, Susan Fish, Don Boudria and Richard Johnston, have hundreds and perhaps thousands of dollars tied up in a business. You are telling us that government should come along and tell those people how they are going to manage and operate their business. I just fail to see what the hell we are trying to prove. If all these businessmen throw their hands up and say, "We have had enough of all this government red tape; you run the show," we may just as well go and live in Russia.

I could probably go on but I am a little agitated. I am sorry I was not here to hear Jack Johnson because he does have money tied up in a business. It bothers me no end to hear these people make all these passionate pleas when they do not have one red cent tied up. They are not trying to make a business go. They are relying on a damned good salary. They are quite comfortable. But businessmen have gone through the school of hard knocks. I talk to them every day and they tell me that if the government continues to impose more and more hardships on them, they are going to throw up their

hands, as they are doing. They are giving up their businesses, Now we are coming along and we are going to tell that little old lady with the big house she has converted into apartments, "Madam, whether you like it or not, you are going to have to accommodate homosexuals if they want your kind of accommodation."

I say we are wrong, wrong, wrong, because I believe these people have certain basic fundamental rights which they have enjoyed over the years and, if we now include sexual orientation, what we are telling those people is, "You no longer have those rights, you no longer have the choice as to who you are prepared to share your house with."

Mr. R. F. Johnston: I am glad you didn't get extreme there, Mr. Riddell.

Mr. Laughren: Mr. Chairman, that is a hard act to follow.

Mr. R. F. Johnston: You can outdo him. Go ahead.

Mr. Laughren: As I have thought more and more about this issue and debated, quite frankly, within my own party about this issue, my position has become firmer and firmer in my own mind. I can assure you it is not because of pressure from the miners and the lumber workers in northern Ontario.

It is because, when I look at the legislation, I feel this is a bill that is designed to prevent discrimination and not to give anybody special rights, as Richard Johnston said. I should say I have been in this Legislature 10 years and Mr. Johnston's presentation was one of the best I have heard in a long time.

As I thought more and more about the legislation, it became clearer and clearer to me how I was becoming more and more intolerant, which is perhaps a strange word to use in discussing this bill, but I was becoming increasingly intolerant with those who did not see or understand the need to prevent discrimination against anybody in our society, and that has made me intolerant on this issue.

I do not want to get into partisan bickering this evening, but it is completely beyond my comprehension how a party decides that a bill like this is a free vote and that the membership of that party does not stand for certain principles. I do not know what principles are more important than those embodied in this legislation.

I can tell you I go back a long way in remembering discrimination. I have never said this before as a legislator, but I can well recall when I was a young person being part of a minority group in a community and feeling--and looking back, wishing I had felt it even more strongly--the kind of discrimination I felt was directed against farm labourers in the community in which I was raised. I know now, looking back, just how strong it was and I know it is still out there in Ontario.

I can remember as I grew up thinking how it was basically because we were different within that community. It wasn't because



my father wasn't a hard worker. It wasn't because we didn't do as well in school as the other children. It was because we were different. We didn't have property. We didn't have assets. We didn't, to quote Jack Riddell, "have a stake in the community," I suppose. That was why we were considered to be different.

9:10 p.m.

This summer I sat in a home and listened to some very fundamentally religious people tell me why homosexuals should not be protected from discrimination. They did not use that expression, "protected from discrimination," but they certainly made it clear they would not support this kind of amendment.

I was pleased with the presentations that were made to the committee by religious leaders, but I came to dismiss all of the biblical arguments because for every biblical argument in support of people who are against this amendment there is a biblical argument which talks about people who live together outside of marriage, and I wonder how many members of this committee would be prepared to stand up and be counted on that issue, not protecting people from discrimination because they happen not to be married.

I will be quite harsh on people, I suppose, but it is always easy to cater to the majority in this society. In a democratic society the problem is not catering to the demands of the majority, it is protecting the rights of minorities and this is a good example of it. It is only one example, but I think it is a good one. I think it is incumbent upon a Legislature always to keep that in mind. We would not even need to be here if all we had to be concerned about was the rights of majorities. They can look after themselves. We do not need to protect majorities.

But I think there is a very thin membrane between the status quo and discrimination against minorities in our society. I know personally of a political candidate who was pressured into resigning three weeks before an election because he was a homosexual. I have always thought it was a very sad commentary on our society that would be the case. That was 10 years ago or longer, I guess, but I am not sure it is that different today. We have not progressed.

I think of the three weeks I spent in September and part of October on the police bill, where the government seemed to think that we were still living in old Ontario, that there was just one big invisible majority out there and no one else had to be protected. The government has to understand the world is changing and that no longer can they sit back and just assume it is the same Ontario, the same Toronto it has always been.

What I do not understand is why the members opposed to this amendment seem to have come to the conclusion that to protect people from discrimination is to give tacit approval to a lifestyle, as though it was their own personal approval and endorsement, which is not the case. I do not now why the members have come to that conclusion in their own minds, why they seem to think their constituents would not approve of them endorsing this kind of amendment. I think it is unfair.

When I look at the bill and see who should be free from discrimination and I go through the list--colour, ethnic origin, citizenship, creed, sex, age, marital status, family or handicap--and then I think of the arguments that Jack Riddell was making, I think every single argument he made against an amendment that would protect homosexuals from discrimination could be applied to every one of those categories, every single one.

When he was talking about the little old woman in the big house--he left out everything but the fact she might wear white running shoes--I could not help but think that could apply to race, ancestry, place of origin, colour, all those things. The very arguments that man was making--I do not want to be unfair to him--have been made about race for the last 100 years, every single one of those arguments.

They can always be cloaked in protection of those who hold property. Those arguments can always be cloaked in that way and I tell you, when he tells me landlords must have their rights protected and that the rights of the landlords have been taken away, I do not know what he is thinking about the rights of the tenants. I have no idea what he is thinking about.

Surely, for every landlord there must be a tenant by definition. Why do you say you supposedly protect one and not protect the other? The logic escapes me. Freedom of choice he says--for whom, for the tenant, for the landlord? Oh, no, for the landlord only, not for the tenant. I do not understand that kind of logic.

It is almost like the very senior executive of Stelco a couple of years ago who said corporations should have the vote because corporations had a stake in society and a lot of people out there did not have any stake in society. If you measure a stake in society by the amount of property you own, maybe he has got an argument but, for Heaven's sake, are we saying, "No property, no vote," because that sounds like the argument Jack Riddell is making. I do not understand that at all. I thought we had gone way beyond that in our society, that to have a vote you must have property.

It seems to me that the arguments that he makes could be applied to the right of an employer not to have a union in the place of work.

Mr. Riddell: When you get guts and invest in your own business, then I am prepared to go along with you.

Mr. Laughren: You have had your say. I know what Jack Riddell's views are on unions too.

Mr. Riddell: Sure. You people want to run everything and you are going to have that chance--

Mr. Chairman: Order. Mr. Riddell, you have had a chance to speak.

Mr. Riddell: That would feed into his hands. The NDP philosophy, they want to own everything.

Mr. R. F. Johnston: Mr. Riddell, we did not interrupt you.

Mr. Riddell: Well, I get a little agitated--

Mr. R. F. Johnston: I can get agitated too.

Mr. Riddell: Why does he bring my name into it?

Mr. R. F. Johnston: Because of these arguments.

Mr. Chairman: Mr. Johnston and Mr. Riddell, Mr. Laughren has the floor and there will not be a vote for a little while, I am sure, so if you want to carry on perhaps you could go outside and carry on.

Mr. Riddell: Let him stop that nonsense about making reference to me.

Mr. Laughren: Mr. Johnston could take him. If Jack Riddell was concerned about using his name, he should be more careful of what he says. I am only quoting him.

We cannot say any more that those who have property have more rights than those who do not have property in the area of civil liberties. That is simply outrageous. I know there could also be a vote among those who hold property out there that says I do not want a union in my place of business. Does that mean they have the right to say that workers cannot act collectively? We decided a long time ago they do have the right to act collectively. I am glad the Minister of Labour is here. I know he agrees with that. I know he sees his mandate as protecting the rights of workers in Ontario. At least, I have heard him say that.

Hon. Mr. Elgie: You do not want me to get mad at you, too, do you?.

Mr. Riddell: The NDP never did know the difference between oranges and apples.

Mr. Laughren: As the son of an Orangeman, I resent that remark.

Mr. Chairman: Can we get back on topic?

Hon. Mr. Elgie: I am sorry.

Mr. Laughren: To say that homosexuals should not be persecuted but at the same time should not be protected from discrimination is truly a specious argument. How can you say that? how can you say, "I do not think these people should be discriminated against, on the other hand they should not be protected from persecution?" How in the world can you say that?

I do not think it is fair. I would have thought that, considering the debate that swirled about this legislation,



considering what I suspect are the minister's views if he could remove himself from his caucus, considering the way in which--

9:20 p.m.

Hon. Mr. Elgie: You are a mind-reader now.

Mr. Laughren: No, I am not. I just stated my view that I am surprised that this committee has not changed its views on the amendment put by the member for Hamilton Centre. I can only hope that the very persuasive arguments put by my colleague from Scarborough West will have convinced some of the sphinxes on the committee that there is a better way and that the better way is to support the amendment.

Mr. Eaton: Mr. Chairman, I guess I am one of those who came to the committee with some pretty definite views when I started and have heard some very convincing arguments through the presentations that we have had before the committee and by some of the members of the committee, although I do not think that cheap shots like those from the member who just spoke, Mr. Riddell, or other members of the committee help the cause very much.

It is an issue I think many people feel very deeply about one way or the other. I guess I fall into that category. Several of the things that bothered me are much like those that bothered Jack, although I am not as adamant on them as he was in his presentation. I think he has a feel of what a lot of people feel through his riding and through much of the province on that issue. Some people pooh-pooh a little bit the fact that a member might be voting the way the people in their riding feel, that they should be taking some leadership apparently and going against the feelings of the people in their riding.

I do not necessarily feel that going against how a lot of people feel in your riding is not necessarily always showing leadership. It is going the way you want and that is not necessarily what you were elected to do in all cases.

I think that some of the presentations that were made before the committee certainly would at times lead me change my convictions and perhaps support the amendment. I want to remind Jack that it is not the government who is forcing something; it is your member who has moved the amendment.

However, some presentations we have seen would really bother me to support the cause. They were presentations by people who practically threatened the members of the committee who made quite a to-do about raids on bath houses in Toronto and perhaps felt that they should have some special protection in cases like that. Certainly if things were going on there that were not accepted legally, then what is the difference between that and condoning a house of prostitution down the street or even beyond that. That those kind of things are what a lot of people were basing their case on before the committee, really bothered me. That they were persecuted because the police stepped in and raided a situation like that.

It probably should have been, just as the situation we heard about in Flamborough township I guess should have been. I think that type of thing affects a lot of people out there who have some deep moral beliefs over the situation, and who have expressed those beliefs quite strongly that they want some freedom of choice too.

Some related, as Mr. Laughren did, to some of the other parts of the bill. Perhaps there is a fairly close parallel in the situations, but I think there are differences too and those differences can be emphasized that it is not a person's moral or religious belief to be against someone because of their colour, creed or religion. But then when it comes to a moral ground like this, they feel very strongly about it.

I do not want to see the type of persecution where somebody is fired from a job just because he is homosexual. But I still feel in the case of the small businessman or the farmer if on the grounds of not wanting to work with or not wanting to have someone around their family who has that particular orientation, that they should have that right still to make that decision. I think that carries through into the situation with schools, with teaching. How far do we go in taking that freedom of choice away from some people?

I think the case has been well made. I personally could not go out and fire someone from a job because of that situation or move him out of an apartment in my house or whatever, unless his actions brought that about. That can happen. I live in an apartment building and had the occasion to go down to our shower rooms, the sauna, and find a couple of fellows fooling around in there. That is pretty distasteful. You could say that could happen if you are heterosexual too, except that we have separate facilities so it is not likely to happen that way.

I just find with my own convictions that I just cannot cross that line to say yes, I will support a particular case. But I think in the cases where it is just blatant discrimination because somebody is that way where you are involved in a larger company, where it is not a personal thing with the person that has a business in situations like Jack talks about, that we can be very careful to try to watch situations like that, and maybe come up with some way of preventing it. The same in large apartment buildings.

At the same time, if actions like I saw in my own apartment building, take place, I would think there should be some recourse for those people who do not want to condone that type of action publicly either.

I will not be supporting the amendment as put by the member for Hamilton Centre. However, I think it is something we can continue to review and perhaps find some way of preventing outright discrimination, but at the same time not taking some freedom of choice away in individual situations.

Mr. McKessock: Thank you, Mr. Chairman. Although I am not a member of this committee, I want to take a couple of minutes to speak against this amendment. I do hate to do this seeing as my colleague is introducing it, because she is an outstanding member

from Hamilton Centre. She is usually right, but this time I feel that she is wrong.

It is my understanding and from what I have read from more learned people than myself, that homosexuality when encouraged can become more prevalent. Therefore, I feel we should not do anything in law that might encourage it or look as if we condone it.

Canada is known as a Christian country, and we like to pride ourselves in this. Our laws from the beginning have been generally based on Christian principles. We do not generally approve things that God disapproves. We do not condone murder, stealing, et cetera. Yet in the bible, homosexuality is classed with these and in numerous places in the bible, homosexuality is condemned by God.

It is easy I feel to understand why, because God made man for woman and woman for man and any other mix of these two does not work. It interferes with his plan to populate the earth. So it makes sense. Therefore, I feel we are making a backward step and a step away from God and a step away from being a Christian country if we were to pass an amendment such as we have before us that would give homosexuals special rights that could spread homosexuality.

9:30 p.m.

Mr. Stevenson: Mr. Chairman, I just want to make a few brief comments. Going back to what Richard had said earlier on tolerances and speaking particularly again of rural areas, I think he expressed that very eloquently. Certainly there have been some very ugly scenes in rural areas over the years, but people who live there may not be terribly complimentary to each other in the names they call each other from time to time, but in general, they work together for self betterment and the betterment of their community and have done so for many years.

I think there is a certain undertone in the rural areas of why we need a human rights bill at all. Why some of the things that are included have to be there. Probably, as has been mentioned earlier, this is one of the more provocative issues that is included.

I agree with many of the statements that Sheila, Susan and a number of others have made in that I certainly accept the fact that there are many areas where people do not have a choice and I would accept the fact that sexual orientation is one of those areas. I do feel, however, unlike race and some of the other issues, that regardless of what one's sexual behaviour or orientation or motives, drives or whatever you wish to put into that area, whether or not you do have a choice, you do have a choice of how you express your behaviour publicly. How public you are about it and how you express that in a public scene.

It seems to me in general the people of this province will accept a very wide range of sexual behaviour with most of them not being terribly critical of that sexual norm, if you wish to call it, but I would say that is a very broad area nowadays. I question in the area that I represent that a homosexual there runs any



greater risk of harassment, black, male, whatever, than a heterosexual who makes it very public that he or she is sort of playing the scene in a very big way. It seems to me as long as people make a choice of expressing their particular sexual orientation in a moderate way, that people will tolerate that behaviour whether they believe it or not, or accept it or not.

There I feel they do have a choice. I feel if it is expressed in a nonabrasive and a nonprovocative way that in general they will be accepted. I would go along with Mr. Eaton when he said that possibly we will have to look at some means of stopping discrimination just because somebody happens to express the word that he happens to be homosexual or happens to be whatever, regardless of what we happen to be talking about. I would have great difficulty accepting that. But as it stands at the moment, I am not prepared to support this being included into Bill 7 at this time and this particular method of inclusion.

Mr. Lane: Mr. Chairman, I think everything I would have said has already been said. I am one of those fellows who listen a lot and do not speak too often. I listened to a good many delegations that came before us this fall and I took some issue, as some of you will remember, with a couple of homosexual groups when they more or less threatened us that if we did not include sexual orientation there would be trouble. Having been a salesman in my lifetime, I do not think that is the way to sell a parcel of goods. If you want somebody to buy something, you do not threaten them, you try to persuade them. It bothered me a little bit that, while they said they were not asking for anything special, they seemed to be saying, "If you do not include it, there will be trouble." And if we do include it, there will more trouble.

I listened with a great deal of interest to the groups who did come before us and to the various people who spoke tonight, and I can agree with almost everybody on some of the things they said. The one thing that has not been said is that the part of rural Ontario I represent is not yet ready to accept this type of change in the original bill. I think we will be doing the homosexual group more harm than good by including it, because we would be forcing people to accept something they are not ready to accept. I personally feel we would not be doing them any favour. I want it known that I am not bound by any political affiliation to vote any way on this particular amendment. Like other people, I certainly have some sympathy for the situation, but I am not prepared to support the amendment to this act.

Mr. Chairman: Is there any other discussion?

Ms. Copps: The minister does not want to say anything? He has spoken to most of the other amendments.

Hon. Mr. Elgie: I think we have had some very sensitive comments from the members of our party and that they reflect the opinion of the party.

Ms. Copps: I am just surprised, because you have chosen to speak to every other amendment. It is rather unusual that you choose not to speak to this one.

Hon. Mr. Elgie: I just have. I said I am supporting the position as outlined by our members, and I think they have put it very sensibly.

Ms. Copps: Can I wrap up then?

Hon. Mr. Elgie: Certainly.

Ms. Copps: I would like to preface my wrapup by saying that, although I am not a business person and I do not run a business, I would not be sitting here on this committee were it not for the small business people in my area. I am a journalist by trade and I do not think that gives me any better access to information or material. I am here as an elected representative representing all aspects and all segments of society in my community. In my riding, there are some three or four local business associations that have communicated to me various degrees of support or nonsupport for the legislation. I do not think the fact that I am personally not involved in business makes my interpretation of the bill any less valid.

I did, however, want to make a couple of comments. First of all, when Bob said he had concerns that we were moving away from a Christian society, I think one of the things we have to recognize living in Ontario is that we are moving towards a more pluralistic society. Although I am a Christian, a Catholic, I feel I want to live in concert with other people not only of other faiths and religious beliefs, but of other sexual persuasions. It is something that is facing this province and it is something we as legislators have to be prepared to deal with.

I could not let a couple of comments pass, one with respect to the bathhouse raids. If the honourable member feels the bathhouse raids were nothing more than simple arrests in a bawdy house, he is not reflecting the true situation. The member knows full well that the bathhouse raids were the largest raids ever perpetrated on this province after the War Measures Act.

Mr. Eaton: That is not what I was saying. I was talking about the activities taking place.

Ms. Copps: The bathhouse raids were mentioned tonight and all I can say is they were certainly a political issue at the time. If the member does not recognize that, then he is being incredibly naive. Mr. Lane in his presentation referred to the fact that some of the groups that came in--and I felt this myself--perhaps had a confrontational mentality rather than a spirit of co-operation. As legislators and as people, we would prefer to deal with people who come with demands that we feel are conciliatory rather than confrontational.

9:40 p.m.

However, I think back in my mind to some of the struggles that have occurred over time for minority groups to be represented. Susan mentioned them in her comments, for example, women. At the time women were accepted as persons and given the right to vote, there were many women who belonged to the radical fringe and felt

forced to chain themselves at Parliament Hill. At that time, it would have been considered a terrible disgrace for those women to come out in public in that way, yet some of them were forced to become the vanguard of their movement and to speak out where many others were afraid to. To this day, we know discrimination exists against women, despite all the legislation and all the good intentions in the world.

To address the subject of religious beliefs, I think if we are really sincere in taking a look at religious beliefs, we have to recognize that not only has the Anglican Church spoken in favour of the amendment, but so has the United Church. As I mentioned in my earlier remarks, the Hamilton conference of the United Church has spoken before the committee. I am expecting a letter of support from the national conference of the United Church. So there is a religious element within society that would see the acceptance of this legislation.

I can only reiterate that I am not asking you particularly to endorse or accept a lifestyle. I think back to the time when I was a child. I was born and raised in a Catholic household, I attended parochial schools all my life, and there was a time in my life when I thought it was a sin to enter a church of another faith. I am 28 now, so this would be as recently as 20 years ago. In our religion, we took a very narrow view and you were simply not allowed to set foot in another church.

Mr. Boudria: Or funeral home.

Ms. Copps: Church or funeral home or whatever. Obviously society is changing and we are becoming more pluralistic. I do not think it is expected that any of you have to condone a lifestyle or orientation you are not prepared to accept. I think you have endorsed the principles tonight. Ross spoke to the principle that we do not want to see people discriminated against in this society. What we are doing in this situation is saying, "We do not want you to be discriminated against, except if you are homosexual."

Take a look at amendment number one. It does not even address the issue of employment of teachers and working with children that was a question of concern for Mr. Renwick. Amendment number one addresses the issue of access to services, goods and facilities. It does not even address the issue of accommodation. It addresses the issues: Should a homosexual be allowed to walk into a restaurant and have a meal in a public facility? Should a homosexual be allowed to partake of local library services? Should a homosexual be allowed to use city hall for his or her purposes and meetings, et cetera, the same as anyone else?

Amendment number one is the most inoffensive and innocuous of all the amendments. It talks about access to services in this province. If you are speaking from a general moral dissuasion, if you are saying you cannot support the possibility of having a homosexual share an accommodation in an apartment building or a place of employment with you, you are not being asked to consider that in amendment number one. You are simply asked to say whether people of every sexual orientation--and that could work equally well for heterosexuals--suppose you were faced with a situation



where you entered a homosexual place of business and the homosexual said to you, "I don't want to hire you because you are a heterosexual." Don't you think you deserve the right to work or enjoy goods or services not based on your sexual orientation? It is a two-way street. We are not saying it is simply for homosexuals.

We are saying that, regardless of sexual orientation, you should have access to available public services, facilities and goods in this province. You can go into the government bookstore and pick up whatever publication you want, et cetera. You are not being asked to accept homosexual teachers in your schools, although we know they are there already. You are not being asked to share an accommodation with a homosexual even though we know that the amendments clearly state that where you are actually sharing accommodation, there is an allowance for discrimination. You are simply being asked to say that homosexuals are entitled to the same goods and services in this province as everyone else.

If you are concerned with the moral issue of sexual orientation, I think you can safely say that amendment number one should and could carry with no malice aforethought, and you may have to reconsider or set aside the other amendments. But I think amendment number one in section 1 is clearly directed simply at access to public services and public goods. It does not talk about accommodation or jobs. I think we have to bear those facts in mind, and bear in mind the fact that we are pluralistic society, and decide whether we are going to be dragged there kicking and screaming or whether we are going to go there of our own accord.

I might add when you are talking about community consent, there is a gentleman here tonight who distributed 20,000 flyers in my riding inviting people to come to a public meeting at which he was going to expose my position as a promoter of homosexuality in this province. In fact, I think the number of attendants from 20,000 flyers numbered about 30, 15 of whom were from the gay community, some of whom were from his organization, and there were about half a dozen people who actually came to the meeting.

My name has been on the front page of my local newspaper saying that I am speaking out on the issue of sexual orientation, and I have had small business people come to me and say: "Sheila, we are glad you are doing it. We may not agree with those people's lifestyle, but we feel in this province there should not be discrimination that is legalized in the form this discrimination is legalized." I have had so much positive feedback that it has struck me, because I certainly thought I was going out on a political limb, and to date I have not seen the evidence. I have seen only people who have come forth and said, "Thank goodness we have someone in the Legislature who has the courage of her convictions and is prepared to go ahead with it."

If you are of the conviction that you cannot tolerate homosexuality in jobs or in accommodation, so be it. We have certainly exhausted every argument. I am not going to bring you around at this late date. However, I would urge you to consider that section 1, part I, deals strictly and solely with access to services, goods and facilities in this province and does not address the issue of employment or accommodation. It is saying to

George Hislop he can go into Toronto public libraries in the same way as I can. I think all of us would agree that, no matter what our feelings on the issue of sexual orientation with respect to employment or more specifically with respect to accommodation, we would have no choice but to support this amendment in section 1, part I, because it reflects the ideal of a nondiscriminatory society towards which we are working.

Mr. Riddell: Mr. Chairman, just on a point of information, were we told in any of the presentations made that people were denied access to libraries, people were denied access to municipal offices, people were denied access to restaurants? Were we given that kind of evidence? I have yet to go into a restaurant or some of those facilities and had somebody ask me, "Are you heterosexual or homosexual?" I have never been faced with that question.

Mr. Chairman: Mr. Riddell, I think you are asking the question of the chair. All committee members have access to the information that has been presented and we have had it well summarized .

Ms. Copps: On that point of information, the member asked for that information and I would refer members of the committee back to the letter that was submitted by the group from North Bay who were asked to leave the Ramada Inn, which is a public forum.

Mr. J. Johnson: In view of the uncertainty of the House, I think we should address the question and vote.

Mr. Chairman: No, Mr. Johnson, the House is not uncertain. This is not a vote bell.

Mr. J. Johnson: It is a very uncertain climate.

Mr. Chairman: I understand that people would like to know what is going on. My understanding is that this is a 10-minute recess to bring the House back to order. I understand that one party is leaderless at this stage of the House. That is the situation in the House as I understand. This is a 10-minute Speaker's recess.

9:50 p.m.

Interjections.

Mr. Chairman: I think I am ready to vote on this question actually.

Mr. Boudria: Who are the voting members?

Mr. Chairman: I can tell you. As long as the chair and the rest know--

Mr. Laughren: Can't we have the honour system?

Mr. Chairman: All those whose hands go up when I call the vote. As long as they are in order, those will be the ones. Let us

have a look and I will look and we will make sure it is in order.

Ms. Copps: Can we just verify that in advance, please? I would like to know who the voting members are before we go to the vote.

Mr. Chairman: Ms. Copps, Mr. Boudria, Mr. Eaton, Mr. Havrot, Mr. J. M. Johnson, Mr. Lane, Mr. Laughren, Mr. McNeil, Mr. Riddell, Mr. Stevenson and Mr. R. F. Johnston.

All those in favour of the amendment? All those opposed?

Motion negatived.

Mr. Chairman: Is there anything else on section 1? Mr. Johnston.

Mr. R. F. Johnston: I presented an amendment earlier in which we need to delete two sections which have now been dealt with, political belief and sexual orientation, but I would like to put that amendment before the committee now, if I might. I think it was distributed early on.

Mr. Chairman: Right.

Mr. R. F. Johnston moves the following amendment: That part I, section 1, be amended by adding between the words "without" and "discrimination" the word "adverse"; that after the word "discrimination" add the words "without limiting the generality of the foregoing," and that to the end of the clause add the words "record of offences or the receipt of public assistance."

Is everybody clear on the amendment being moved? It is the first one that was circulated by the members of the NDP.

Mr. R. F. Johnston: It is probably the last one in that.

Mr. Chairman: Yes. Actually the package did not come in order. It is the second to last one.

Interjections.

Mr. Chairman: Mr. Johnston, I think everyone is clear on the amendment.

Mr. J. M. Johnson: Where is it?

Mr. Chairman: If you look on the second to last page of the package from the NDP.

Mr. J. M. Johnson: I can read it, but I can't understand it.

Interjections.

Mr. R. F. Johnston: It would read as follows, if I might. Section 1(1), "Every person has a right to equal treatment and enjoyment of services, goods and facilities, without adverse



discrimination and without limiting the generality of the foregoing because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family, handicap, record of offences or the receipt of public assistance." That is how it would read now with these amendments in it.

We could deal with one at a time, if you would prefer, or we can deal with it all.

Mr. Chairman: Mr. Johnston has suggested he is prepared to deal with it all. Is there any objection to dealing with it all in one kit and kaboodle?

Mr. R. F. Johnston: The arguments, if I might, go as follows: Put in the word "adverse" between "without" and "discrimination" to make it "without adverse discrimination." I wanted to do this for a couple of reasons. One was to emphasize the negative factor of discrimination, in general, that the word might be interpreted to--because the definition under part II, section 9(c) "discrimination means differentiation resulting in an exclusion, qualification, or preference"--I wanted to make it clear that was in a negative fashion, that it affected somebody; specifically, to allow for what is referred to in the bill as positive discrimination, that ability to try to have affirmative action which is also implied within the bill in other sections.

That notion that giving preference to a group which has been discriminated against in order to overcome that, or redress that discrimination in general, in principle, is something we would accept. I know that members of the committee have difficulty with the specifics of that, in that a number of arguments have been made throughout the procedures about what role affirmative action might take. A number of people have spoken against the notion of quotas. For instance, if one was trying to follow the American system.

But in terms of the ability of the Ontario Human Rights Code to suggest that there might be some redress of a discrimination within a business, in terms of overcoming that problem, is something that I think we all agree is a power that we would like to see the commission have, some of us in limited terms, and some of us in more specific and stronger terms than are in the bill at the moment. But in terms of the principle involved, I wanted to emphasize that one can discriminate on a temporary basis, to try to overcome a long-standing kind of discrimination.

Examples that have been used in the past are examples in terms of trying to get an employer to accept some blacks, maybe giving some kind of an incentive to an employer to do so, which could be seen to be a positive discrimination, to overcome what had been a negative discrimination or an adverse discrimination in the past. That is the reason for the word "adverse."

The reason for adding "without limiting the generality of the foregoing" was, as all members will know, my desire and that of Mr. Renwick and our party to try to open up this definition of who is covered from freedom of discrimination.

We suggested this be put in for a number of reasons. The

first one is that it comply with the thrust of the preamble, the preamble being one which is a very open-ended kind of suggestion that we must overcome adverse discrimination within our society in general and that, from time to time, the recipients or the victims of discrimination may change, but that the notion that, in our society, an adverse discrimination is something which is unacceptable, is something we would like to see accepted. We would give to the commission the power to decide when that was the case.

We had a number of groups before us who do not fall within the mandate of this particular listing that we have of people who are discriminated against, and that they have not been discriminated against for race, ancestry, place of origin, et cetera, but because they had a beard, or because they were overweight or whatever. In some cases this could be justified and not be seen as an adverse discrimination, and there are a number of examples given for that. In a number of other cases, there could be seen to be an irrelevant or frivolous reason for turning somebody down for a job.

10 p.m.

To have an open-ended kind of definition of this would allow the Ontario Human Rights Commission to make judgements over the next number of years before we amend this bill again. It would be wise to have an open-ended kind of clause, and we came up with this one, having chosen among a number of options, quite frankly. We were trying to decide between the notion of "unless reasonable cause exists" for the denial, which is in the British Columbia code, or whether to say "for reasons such as," to make it open-ended, but we decided this was the wording we preferred to try to use.

It should be clear that I do not see this as some sneaky way of getting inclusion for people so that they are not discriminated against for reasons of political belief or sexual orientation, two things that the committee has just voted down. I do it in a very open-minded and open-ended fashion, to say that at some point or other this committee may not be meeting, or a following committee may not in years to come, but that it may very well be that the commission decides those things are an adverse discrimination and are unfair at the specific time they are raised.

I would like to see the potential for this commission to have the power to do so. I know that some committee members, in the past, expressed some concerns about the range of powers already given to the human rights commission, and I know that there have been some concerns, both in terms of investigative rights and other things, that made people feel uneasy about the strength or power of the commission. I would also suggest that none of us have wanted this to be a commission that was so tied down by rule of law and finite dotting of i's and crossing of t's that it is unable to grow or to adjust to the times.

Surely it is easier for the commission that is dealing with complaints coming in on a regular basis, the thousand or so that are on the go all the time, to make decisions about what is changing and what is not changing in our society, and how best to

adapt to it, than for a committee of the Legislature that looks at this every 10 or 12 or 13 years, or whenever was the last time we got together on this bill. I would hope the committee would see it would be worthwhile to have a general statement of principle in this opening clause, which would indicate that the committee was not hamstrung in determining that something was an adverse discrimination by a simple listing that becomes out of date at some point or other.

To argue that it does not become out of date, some time or other, would be to argue against our inclusion of marital status, a family, and of handicapped, that are already in here, because those are changes to that bill that we have added since. With the good judgement and the experience of our commission, we could also have been dealing with it in an open-ended way, in the last number of years, if the commission had the power to do that. It is also fair to say that a number of years ago that sex would not be--

Closure has been moved? We are sitting here and closure has been moved?

Interjections.

Mr. R. F. Johnston: I wonder if we can be clear on this. You said there was just a 10-minute recess to regain order. It is not that there is a vote to be taken in short order on closure?

Interjections.

Mr. Laughren: If the motion has been moved on closure, there's an opportunity for members to speak on it, is there not?

Mr. Eaton: You cannot speak on a motion to rule on something.

Ms. Copps: They are moving to invoke closure on the previous amendment, which other people are saying on a point of order should go on the next amendment, but it is under discussion right now.

Mr. Chairman: I think if it is under discussion, it would be under points of order.

Mr. Eaton: Maybe it would be appropriate, if some of the members have left and gone up there, if we did adjourn and go up there for that.

Mr. Chairman: Mr. R. F. Johnston moves, seconded by Ms. Copps, adjournment of the committee.

Is this the wish of the committee?

Ms. Copps: Yes, it's the first time in 50 years and I would like to be there.

Mr. Chairman: We will stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 10:07 p.m.





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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, NOVEMBER 4, 1981



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Substitution:

Johnston, R. F. (Scarborough West NDP) for Mr. Stokes

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of the Attorney General:

Stone, A. N., Senior Legislative Counsel

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister  
Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon. R. G., Minister  
Hess, P., Director, Legal Services



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, November 4, 1981

The committee met at 10:13 a.m. in room No. 228.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario:

Mr. Chairman: We have a quorum. We adjourned last night on motion by Mr. Johnston. I believe he was just summing up at that point. I might be wrong though.

Mr. R. F. Johnston: I think that is wishful thinking, Mr. Chairman. Do you remember exactly what I was saying? Otherwise I will probably have to go back and start again?

Hon. Mr. Elgie: Without limiting the generalities of the foregoing, I am not averse to your continuing with the other matters that you have not addressed yet.

Mr. R. F. Johnston: You would not be considering that was adverse discrimination if I were to go back and say it all again?

I think I made most of the points I wanted to on adding the section about "without limiting the generality of the foregoing." The primary notion here was to give flexibility to the commission to be able to adapt to changes that might occur in the future and the need to protect groups of people who might be the objects of a type of discrimination which we are not at this present time dealing with. I think I used in my remarks the example of several areas in section 1 which were not there prior to this bill being brought in and said that we cannot necessarily foresee which ones will be needed in the next number of years. But if we are going to wait for an extra 10 years or so before we review this bill in depth, then this would be limiting and strait-jacketing the commission.

I wanted also to add to the list at the present time under this first section, which is to do with the enjoyment of services, goods and facilities, a couple of the groups which we find covered under other areas and for which I am surprised there is not coverage at this point. Two of those groups we have debated, and so I will not include them in this motion. One is to do with sexual orientation and the other is to do with political belief.

It strikes me as strange that we have no coverage in this section for people who have paid their dues in terms of a criminal record and, therefore, that the matter of record of offences is not included in this general listing of who is free from discrimination when we have it in some of the other categories later on, as we go through the listing. Why is that the case? I was hoping that we could just add the term "record of offences" in this matter as well.

The other item I thought would need to be included would be some protection for people who are in receipt of public assistance. It just came to my attention and I raised it in the House yesterday. I think the minister was there at the time. A recent Toronto housing registry survey, done by the three nonprofit housing registries in the city of Toronto which try to provide housing to people who are of limited means, listed a number of potential landlords who would be willing to take people. Forty per cent of them were unwilling to take people for the reason that they were receiving public assistance. That is a severe limitation in terms of a registry which is designed specifically for people who are at the low-income end of the scale.

It strikes me as strange that we would not have in this first clause, which outlines those who are not to be discriminated against, those people who are in receipt of public assistance, since we do add it in to the other items. We do not include it for contracts or employment, but that they would not be included in the enjoyment of services, goods and facilities seems to me to be strange. Therefore, we have moved that these two groups--people who have a record of offences and people who are in receipt of public assistance--should be included in this general listing of those who are exempted from discrimination.

Mr. J. M. Johnson: Mr. Chairman and Mr. Minister, I would like to set out some of my concerns, not only with this amendment but with possibly similar types of amendments throughout the legislation which are being proposed. It seems to me that one of the concerns expressed by people who appeared before this committee was the fact that the legislation was possibly not drafted in the clearest, most concise manner and that a lot of the interpretation was left to lawyers or the human rights officers.

This was a concern to me because I feel this type of legislation should be clear, that every party involved, every citizen, has the right to know what we are setting out in this legislation without having to go to a lawyer and without requiring someone in the human rights commission to indicate whether they have made the right decision in hiring or in allowing someone to move into their accommodation.

I would think that when we draft this we should do it on the understanding that it would be understandable by everyone: the landlord, tenant, employer and employee. Something of this nature, this amendment that Mr. Johnston has proposed, "without limiting the generality of the foregoing," which he has explained as to what he perceives it to be, quite frankly, I still cannot accept as something that can be placed in sections 1 to 5 and be understood by the public.

I have a great deal of difficulty with this and, as I mentioned, I am not talking only about this one section. I would like to think that when we draft this legislation we keep the concerns of the people in mind. I have difficulty with it and I am sure there are many people out in the real world who would have the same difficulty.

I opened my business 31 years ago on this date, and at that time we had very little government interference in business. I used to spend two or three hours a week looking after my books and most of the time in merchandising, retailing, buying and selling. Today an average businessman in the same situation would spend 50 per cent of his time in the office.

We have imposed an intolerable burden on the small business community. We are constantly bringing in legislation that they cannot live with because they cannot understand it. We have the opportunity today, and until this bill is through, to draft legislation that is clearly understood by the average person, not a lawyer, but someone who does not have legal expertise or advice or knowledge. This is what I hope we can do.

This clause of Mr. Johnston's just leaves me baffled as to what it means. I think that in many cases an individual would hire someone in good faith and find out that he may have broken a law by some method he is not even aware of. While they say that ignorance of the law is no excuse, I would submit that if you cannot understand it, then surely there must be some excuse.

Mr. Johnston mentions that it is an open-ended clause with flexibility. I submit that those are two terms that create a problem. I think that it should not be open-ended and it should not be flexible. We should clearly say what we want to say and accept it or reject it, but let's be concise, let's be clear.

Mr. Chairman, I have taken too long, but I would submit that what I have said on this amendment I would like to carry through the rest of the bill. Thank you.

Mr. Riddell: I do not think we can support it. I think Mr. Johnson made some good points. When it comes down to the definition of "adverse" I suppose what is adverse to one person would not be adverse to another person. I think it probably just muddies the water more than it is now. As for "without limiting the generality of the foregoing," I think the foregoing is spelled out fairly clearly. We are dealing with services; we are dealing with goods and facilities. What else could possibly be included in there?

I think the more wording you put in these bills, the more opportunity you give to these lawyers to have a real heyday when they get a case into court. I can see what Mr. Johnston is getting at if he is talking about, say, discrimination in the case of a senior citizens' home, but I think that is covered under section 14, which states: "A right under part 1 is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under part 1."

I think maybe his fears are covered under that section of the bill. I agree, I think the less verbiage we use in some of these bills, the better it is as far as the public understanding



what they are all about is concerned and in preventing a real heyday for lawyers who like to get these things into the courts and start to argue these sections of the bill that do not have clear meanings.

I think I am speaking on behalf of our members when we say we cannot support it. Maybe Ms. Copps would like to comment.

Mr. Chairman: You think you are speaking on behalf of your members.

Ms. Copps: Mr. Chairman, I would like some clarification. I think that Mr. Johnson has hit the nail on the head when referring to the issue of--

Ms. Copps: Mr. Chairman, I would like some clarification. I think Mr. Riddell hit the nail on the head, when he referred to the issue of adverse discrimination, because I think you would need a breakdown of the definition of adverse.

In part II, if I understood you correctly when you spoke yesterday, Mr. Johnston, I think you were referring to "without limiting the generality of the following" rather than the "foregoing" when you are talking about areas of discrimination. You were not referring to services; you were referring to the actual issue of discrimination. In legalese "the foregoing" means "the preceding" and would cover services rather than the actual area of discrimination.

Mr. R. F. Johnston: What we were trying to say was that there is a generality expressed, that is, that there should be no discrimination in the right to equal treatment and services, but it is then closed down by a list of exceptions. What we are saying is that we are not trying to limit the generality of that foregoing.

Ms. Copps: Right. Are you limiting the generality of the services, or are you limiting the generality of the areas of discrimination?

Mr. R. F. Johnston: One is trying not to limit the generality of the right to equal treatment.

Mr. Chairman: Ms. Copps, you will have to speak into the microphone.

Ms. Copps: Sorry. It was my understanding from what you were saying yesterday that you were attempting to provide the inclusive as well as the exclusive wording. In that case you would put "without limiting the generality of the foregoing" at the very end of the amendment so that it would cover all those prohibited areas of discrimination. If you say "without limiting the generality of the foregoing" after "discrimination," that refers specifically to services, but it does not expand at all the context of prohibited areas of discrimination.

Mr. R. F. Johnston: I understand what you are saying, but I think you are misinterpreting what we are saying. The general statement is that all people have a right to equal treatment, and then that is made exclusive by a list that follows that and which cuts out certain kinds of features we have not named.

Ms. Copps: Right. But the "foregoing" is not the following; it is the "preceding."

Mr. R. F. Johnston: That is right. We do not want to limit that generality of equal access by the list that is following.

Ms. Copps: But when you have the legal wording there, when you say "without limiting the generality of the foregoing," that is not without limiting the generality of the following. It is "without limiting the generality of the preceding," which refers to the services and not the groups of discrimination. I think we would be prepared to support the amendment if it were placed at the end of the whole passage.

Mr. R. F. Johnston: All right. I will be glad to adjust it.

Ms. Copps: I am not sure whether we should be voting on this thing. I would prefer to vote on it as three individual packages so we can make appropriate amendments, rather than voting on the whole thing. We are talking about three totally different concepts.

Mr. R. F. Johnston: Could I move that we split it into the three sections to deal with it as expeditiously as possible?

Mr. Chairman: Yes. Obviously we are going to have to do that at this stage. We did ask about it. Is there any other discussion on any one of the three since we have started out that way? We will split it in the vote.

Mr. R. F. Johnston moves that section 1 be amended by adding the word "adverse" between "without" and "discrimination."

Motion negatived.

Ms. Copps: On the second one, I happen to have an amendment. If Mr. Johnston doesn't object, I think I would use slightly different wording. If you want to use it as your amendment, I do not care. I think you have a copy of it; it was given out in the package. Again, it is the question of the inclusive wording, but it places the "without limiting the generality of the foregoing" at the very end of the section, rather than specifying for goods and services.

Mr. Chairman: Do you have an extra copy of the amendment?

Ms. Copps: I think you have one.

Mr. Chairman: Ms. Copps moves that each of sections 1 to 5, inclusive, be amended by inserting after the last word therein respectively, "without limiting the generality of the foregoing."

We are into another area here. Is there any objection to dealing with this as it pertains to sections 1 through 5? Mr. Johnston, do you have any objection to dealing with this as Ms. Copps has indicated?

Mr. R. F. Johnston: That is fine.

Mr. Chairman: Is there any further discussion on this?

Mr. Riddell: I would like to hear Ms. Copps' explanation.

Ms. Copps: It goes back to the points Mr. Johnston made last night. It is the idea of inclusive rather than exclusive wording in the code. There were different arguments given. For example, the British Columbia code basically states that no person shall be discriminated against. Then it leaves to the court some interpretation of discrimination. It is a more open-ended concept.

I think the courts have shown that it is better to list groups, as you see listed here, but that does not mean that it is an entirely exclusive group. It would be a basic, general philosophical statement that no person in this province should be discriminated against.

Hon. Mr. Elgie: Mr. Chairman, I just want to re-emphasize what Mr. Johnson was saying. I think it is important that a code say what the government intends that it cover in so far as grounds and areas are concerned because there is problem enough, I submit, as did Mr. Johnson, for individual citizens to understand what it is they should not be doing and what others have as rights as well as responsibilities.

I think broadening not only the grounds but the areas of coverage, leaving it in the hands of the commission to determine whether or not any ground or area beyond those specified in the code are grounds and areas that could be addressed, leaving it to their judgement whether a matter should go to a board of inquiry, and then leaving it to a board of inquiry as to whether or not a particular method of dressing or a particular hair style or whatever is an appropriate matter that should be dealt with before a board of inquiry, is asking too much of society.

I think the representative from Quebec indicated the importance, in his own view, of having specificity in a bill so that people understand what it is all about. I have already in the course of the committee hearings indicated that I will be endeavouring to put out a layman's guide in everyday language to the bill, but how do you put out a layman's guide in everyday language to deal with matters that you have not addressed, but may be addressed in a vacuum by others not being so directed by the Legislature? I think it is unfair and that it is not in keeping with what most of us think a bill should be doing.

Mr. R. F. Johnston: How did they do it in BC, Mr. Minister?



Hon. Mr. Elgie: That is exactly what they have done. They have taken the open-ended approach and that has been criticized by many as not providing the degree of certainty and specificity that I have said from the beginning I think this code should have, and my colleague Mr. Johnson has supported me.

Mr. R. F. Johnston: But it has not been withdrawn from that bill, as far as I know. It is still operating and it allows people to have another avenue of access, doesn't it?

Hon. Mr. Elgie: I did not say that it needs changing. It is there.

Mr. Riddell: What do you mean by "another avenue of access"? Are you saying that it allows them to take it to the courts?

Mr. R. F. Johnston: It has happened in BC.

Hon. Mr. Elgie: It allows any issue that is perceived as discrimination by the commission to be supportable and taken to a board of inquiry to determine whether or not it is discrimination--not on the grounds and areas we have mentioned here, but on any grounds or areas.

Mr. R. F. Johnston: To be fair, in the BC instance where they have used that, it has been challenged in the courts and the courts did not allow the generality in the one case that I am aware of.

Hon. Mr. Elgie: They have allowed some cases.

Mr. R. F. Johnston: They have allowed other cases. I think it allows more flexibility in the area of movement. We already know where the lines are drawn; I do not think we need to extend the debate.

Mr. Chairman: Mr. Johnston, just so we are clear, are you withdrawing the second part of your amendment?

Mr. R. F. Johnston: Yes.

Mr. Chairman: So we are dealing with one proposed amendment.

Mr. R. F. Johnston: Yes.

Mr. Riddell: I am going back to the rather heated debate we had on an issue last night.

Mr. Laughren: Only one person was heated.

Mr. Riddell: It seems to me that you people got pretty upset.

Mr. Chairman: Let's change yesterday's habits in the Legislature and in committee and get on with it.

Mr. Riddell: Are you telling me that if we include this, they could look then at sexual orientation as prohibited grounds for discrimination?

Hon. Mr. Elgie: Yes.

Mr. Riddell: So it's kind of a back-door method of getting this--

Hon. Mr. Elgie: I would prefer you did not put it that way.

Mr. R. F. Johnston: At least last night I was very direct about that. I did not say that was not the case at all.

Mr. Riddell: I thought your argument last night was very convoluted. You had me so mixed up I couldn't sleep last night.

Mr. R. F. Johnston: That's useful. I will remember that as a tactic from now on.

Mr. J. M. Johnson: I would just like to make one brief comment. Mr. Riddell has brought out a point that emphasizes the concern I expressed. We are drafting this legislation; we are not really sure what the intentions are or how far it is going to go. Whether accidentally or not, there are implications that we are going to do something more than many of the members of this committee intended to do. This is the concern I have with the bill.

We have to be clear and concise so that we understand it. If we do not understand it, how in the world can we expect the people that we are legislating for to understand it and accept it? Let's be a little more concise in our amendments.

Mr. Chairman: Are we ready for the question? All in favour of the amendment? Opposed?

Motion negatived.

Mr. R. F. Johnston: I will move on to the last one, the notion of adding to this first section, in respect of services, a couple of the areas which appear elsewhere as excluded groups, namely, record of offences and receipt of public assistance. Could I ask the minister if there were reasons I am not aware of that they were left out of this section?

Hon. Mr. Elgie: I do not think it would be any surprise to you to know that Life Together identified certain areas, one of which was in the area of accommodation, which you yourself had given as the reason for having some interest in the area of public assistance. That is why it is added to the accommodation section.

Similarly, in record of offences it was identified that the problem was in rehabilitation, getting back into the employment context and becoming independent with regard to record of offences. So record of offences was confined to the area of employment. Both of them, therefore, address issues which were identified.

As Mr. Johnson has said, there are a lot of the moderates who support what we are doing, but they want a degree of certainty and they want it to address issues which are deemed to be relevant issues. Maybe in some future time other things will become apparent that need to be addressed, but at this time, this government feels that those two areas--accommodation and employment--are the areas to address.

Mr. R. F. Johnston: It strikes me as strange that we would add marital status and family as two new items under services when those, presumably, would not be the major factors for those two areas. They are much more likely to be matters of accommodation and employment than general enjoyment of services.

Is there some reason for not making sure that people who we have now decided have access to basic civil rights in accommodation and employment should not have it in the enjoyment of facilities? Do we want to have a situation where somebody can be turned away from, say, a library or a recreation centre because he is on family benefits or has had a record of offences? Even if that is not likely to occur, is there some reason for including marital status and family and not including these other groups that we decided elsewhere should not be discriminated against?

10:40 a.m.

Hon. Mr. Elgie: You know, of course, that marital status already applied to the previous code in the area of employment, when problems were identified in Life Together about accommodation as well as in other areas. There have been several legislative changes intervening over the years, for instance, the Family Law Reform Act, identifying certain different marital relationships. Therefore, it was deemed by Life Together and confirmed by this government that the area of marital status should have further extension with legitimate exemptions for reasons we felt were appropriate. Family status was added.

I might just say, in looking over other legislation, it also will surprise you that the limited area of handicapped covered by the federal government's Human Rights Code applies only to employment, as I believe does the Saskatchewan code. So certainly it is not unusual for governments to endeavour to respond to situations and not to give blanket coverage.

I understand that you would favour blanket approaches by "not contrary to law" coming out and "without limiting the generality of the foregoing," but I hope that you are not suggesting it is unusual--

Mr. R. F. Johnston: Oh, no, I am just asking why.

Hon. Mr. Elgie: --because it is certainly well accepted, and those are the reasons.

I challenge you to give me any evidence where there is a problem, for example, in the area of public assistance, with regard to services and facilities. Certainly I have not been able to identify one and you did not in your remarks. You identified accommodation.



Mr. R. F. Johnston: Identify some for me on creed, age and sex. It strikes me that if we are not dealing with morality here, we all dealing with the specific excluded groups. I do not understand why they are not added if that is not a major concern. It seems it is not a major concern for creed these days very often, or place of origin in most cases. Why not these other two areas that are already being included elsewhere?

Hon. Mr. Elgie: That is our position on it.

Mr. R. F. Johnston: You are not moving?

Hon. Mr. Elgie: No, we are not willing to.

Mr. Laughren: Now there's an explanation right there.

Hon. Mr. Elgie: I have given quite an explanation. I do not expect you to agree with it. When you don't I may have to arrange for some of my little four-legged friends to get after you, but that is all right; I understand.

Mr. R. F. Johnston: We are not being tied down by what other people are doing in other areas. I could understand if there were some reasons. On "generality of the foregoing," I accept the argument for the other side of that approach; I have no difficulty with that. What I do not understand is why, if we do not see that there is a difficulty in this particular area, we do not want to add those groups which we are using for other reasons in the bill to make sure they are protected. If we feel that there is a reason to protect somebody on those other grounds for accommodation or employment, why not for enjoyment of services? I do not understand the distinction. Rather than having a nonanswer, surely--

Hon. Mr. Elgie: It was not a nonanswer. I clearly stated to you, and I thought you had followed me, that Life Together, following a review of human rights issues that were evolving, carried out a survey throughout the province, met with hundreds of groups and identified public assistance in accommodation and employment in the area of record of offences.

Mr. R. F. Johnston: And sexual orientation in any number of matters; let's face it.

Hon. Mr. Elgie: They did not even get into the area of harassment, nor did they get into a number of other areas we are getting into.

Mr. R. F. Johnston: Exactly.

Hon. Mr. Elgie: I am telling you they could not find any evidence of problems. Therefore, we should display leadership in the areas where they did identify problems. That's what we have done here.

Mr. R. F. Johnston: So they have found problems with people being excluded from services because of family?

Hon. Mr. Elgie: Yes.

Mr. R. F. Johnston: People excluded from services because of their marital status?

Hon. Mr. Elgie: Have you read Life Together?

Mr. R. F. Johnston: Yes, very carefully.

Hon. Mr. Elgie: This is where they identify these problems.

Mr. R. F. Johnston: All I am saying is that they have identified other problems that are not being addressed by this bill and they did not address other problems which you are including in this bill. I do not understand why you are not including this area in this bill.

Hon. Mr. Elgie: Because we do not feel there has been a demonstrated problem that should be addressed. When there are problems addressed we should move into those areas, and that is what we are doing.

Mr. R. F. Johnston: If the occasion should arise, because we do not have an open-ended clause in here, that an ex-offender should be denied access to services, although he is protected for employment or for accommodation, you do not feel that the commission should have any right to make sure that that does not occur. The same goes for someone on public assistance who may be denied access to services. Even though we do not see it as a problem, we do not want to give the commission the power to make sure that does not happen.

Hon. Mr. Elgie: That's right. The government will address issues as they evolve, as it has in the past from time to time.

Mr. Riddell: I am going back to my example last night of the elderly person who made his home over into four apartments or something of this nature, and that elderly person by virtue of age and maybe an overactive nervous system was very uneasy about renting that apartment to a person who had a record of some kind. This may be the reasoning you people used in seeing that it was not included in other than employment.

Hon. Mr. Elgie: I think the reason it was identified in Life Together was that (a) there was not a problem--nor have I heard good evidence of any problem, by the way--and (b) the main one that was identified to them, at least, was that an essential element of rehabilitation is gaining employment. That is the area we are addressing.

Ms. Copps: My understanding of record of offences is that the person already has to have a pardon. Are we here as the Minister of Correctional Services seeking rehabilitation, or are we here to give people human rights? You are saying that in employment a record of offences cannot be considered after the person has received a pardon, but though it is all right to give equal treatment to everyone as far as employment is concerned, it is not all right to give equal treatment as regards accommodation.

There is an inconsistency there. If you feel you do not want to include record of offences, period, then I can understand that you would have some rationale for that. Fine, you have chosen, in your wisdom, to include record of offences in one area after a person has a pardon. The selectivity just does not hold up because you are saying either you are allowed to discriminate against that group of person, or you are not. You are specifying that in the area of employment you cannot discriminate against them.

To say that it is being identified as an area of rehabilitation is not the function of the Human Rights Code. The function of the Human Rights Code is to give everyone equal treatment, including those who have received a pardon for which presumably they have already demonstrated an ability to have been rehabilitated and are entering the job market, the accommodation market and the services market on a free and equal footing with everyone else in society. There is certainly something inconsistent with including them in one area and not including them in the other. I do not think the rationale you have used for it holds up.

Hon. Mr. Elgie: I might add, Mr. Chairman, that it is the same rationale used by the government in power in Ottawa when they, as well, confined the area of record of offences to employment.

Ms. Copps: Are we here to discuss the legislation of the government in Ottawa, or are we here to discuss the Human Rights Code?

Hon. Mr. Elgie: I have no further comments to make. I think I have made my position pretty clear.

Mr. Chairman: Any further discussion? Are you ready for the question?

Mr. R. F. Johnston: It is kind of bizarre.

Mr. Chairman: Is everybody clear what we are voting on? It is to add at the end of the clause the words "record of offences or receipt of public assistance."

Motion negatived.

Mr. Chairman: Are there any other amendments to part I, section 1?

Hon. Mr. Elgie: Don't tell me we are going to get through section 1 today.

Mr. Chairman: Ms. Copps, I think we have picked yours up.

Ms. Copps: Yes, I think they have all been done.

Mr. J. M. Johnson: I thought I moved an amendment a couple of weeks ago.

Ms. Copps: It was passed, wasn't it?

Mr. Chairman: We passed that one.



Mr. J. M. Johnson: Did we not move the second one?

Hon. Mr. Elgie: You had an amendment to section 1 that was passed earlier. We have not done sections 2, 3 or 4.

Mr. Eaton: Mr. Chairman, I would like the question to be put that section 1 stands as part of the bill.

Mr. Chairman: Yes. There is nothing else. Shall section 1 carry?

Section 1 agreed to.

On section 2:

Mr. Chairman: Is there any difficulty on section 2?

Mr. Stevenson: I have amendments to part I, section 2(1) and 2(2).

Hon. Mr. Elgie: Section 2(1) and 2(2).

Mr. Stevenson: Can we do both of these, part I, section 2(1) and 2(2), at the same time? Section 2 has two parts and there is an amendment to each part.

Mr. Chairman: It would be more in order and easier for me to keep track anyway if you moved section 2(1).

Mr. Stevenson moves that part I, section 2(1) of Bill 7 be amended (a) by striking out the word "in" in the first line and substituting therefor the words "with respect to" and (b) by striking out the word "family" in the second line of the subsection and substituting therefor the words "family status".

Mr. Laughren: What is all this new fangled stuff going in here? I am getting all confused.

Interjection: Was that in the appendix?

Mr. R. F. Johnston: It is in the errata.

Mr. Chairman: This is the same that was moved and accepted for section 1(1). Is there any further discussion?

Mr. Riddell: With respect to status, that is the only change?

Mr. Chairman: Yes.

Motion agreed to.

Mr. Chairman: Can we carry on with section 2(2) then as well?

Mr. R. F. Johnston: We have not voted on section 2(1) yet, have we?

Mr. Chairman: I am sorry.

Mr. R. F. Johnston: I thought you voted on those amendments.

Ms. Copps: I just said, can I present my amendments? I have other amendments.

Mr. Chairman: No, we have not voted on section 2(1). I was asking whether we could move the similar amendments on section 2(2). Do you want to treat section 2(1) first?

Mr. R. F. Johnston: I would like to continue with section 2(1).

Ms. Copps: Can I go on with the amendment that you have already filed, the one on sexual orientation? I would like to see all the rest of them, sections 2 through 5, moved at the same time because we have already broken it up. Yesterday we broke it up when we voted on section 1. I would just as soon vote on all the rest of them at once, which would be sections 2 through 5 inclusive.

Mr. Chairman: Is there any objection to that? What is your amendment now?

Mr. R. J. Johnston: Are we doing this just for sexual orientation, or are we going to do this for all matters?

Ms. Copps: Just on sexual orientation.

Mr. Chairman: We are on section 2(1). I have just got to find it, Ms. Copps. Does everybody have the amendments? Then is there any objection to dealing with these amendments as they pertain to section 2(1) and 2(2), section 3, section 4(1) and 4(2) and section 5?

Ms. Copps: I do not really have any other comments to make. I think it was all very well said yesterday.

Mr. Riddell: I would just like to comment and pay tribute to my good colleague Ms. Copps for taking a stand on what she firmly believes. What she believes may differ from what we believe in. I have a lot of respect for her and I am sure that a lot of the people throughout Ontario have a lot of respect for her efforts on behalf of sexual orientation and her attempt to include that in the bill.

I listened to the debate last night. I listened to the impassioned pleas on the part of Ms. Copps, Mr. Boudria, Ms. Fish and Mr. Johnston. I was interested in the comments made by Mr. Johnston and Mr. Laughren when they talked about common law relationships, but I am just saying, where do you stop? If we include sexual orientation, should we also have something in the bill which states that there will be no discrimination against people who live common law? We also know, particularly those of us who represent rural areas, that there are occasions when we hear about relationships between homo sapiens and other genus and species of the animal kingdom. What if those come to us and ask for special rights?

Hon. Mr. Elgie: Who is going to lay the claim? Who is going to make the complaint?

Ms. Copps: I do not suppose I would like the juxtaposition (inaudible).

Mr. Riddell: Ms. Copps also stated yesterday that there was a time when Catholics were not allowed to go into Protestant churches and into Protestant funeral homes and all the rest of it. I will tell you that change was not brought about by legislation. That change was brought about by the ecumenical movement, the realization on the part of our religious leaders that they had to adjust in order to meet changing times.

What I am saying is that we should treat sexual orientation in the same way, as an educational process. It is not something for legislation. I am firmly convinced of that because you are going to simply get the backs up of people whom you are trying to force to accept something that they at this time cannot accept. I am sure over a period of time, through an educational process and not through legislation, they will accept something like sexual orientation.

Here, again, you people saw sitting in the committee a former constituent of mine now living in Toronto--Ms. Copps knows him well--John Kellerman, a very severely handicapped person and a person who is very supportive of gay rights and would like to see sexual orientation included in the bill. John phoned me and we had a lengthy discussion on the telephone. I said, "John, I will write you a letter and I will tell you what my viewpoint of the thing is." I simply want to put this letter into the file.

"Thank you for contacting me regarding your concerns about Bill 7. The committee has heard a large number of presentations and we have read a good many briefs pertaining to various aspects of the bill. Many presentations were made by members of the gay movement or by individuals and groups supporting gay rights. I personally do not believe that sexual orientation should be a basis of discrimination, providing fundamental human rights are not violated. My concern is the banning of discrimination based on sexual orientation in the hiring of teachers." I believe that even Mr. Renwick put up a bit of an argument in this same regard.

"As you well know, the Toronto Board of Education adopted a motion banning discrimination based on sexual orientation, which means for many frustrated parents that, in the hiring of teachers and the role modelling that is involved, there must be no support of parental concerns to encourage children to choose between the creative and destructive in sexual orientation."

If Ms. Copps likes to talk about the stand that the United Church has taken, I say in my letter, "Dr. Ernest Marshall Howse, ex-moderator of the United Church of Canada, very pointedly and pungently said, 'I am looking for the day when to be a discriminating person is not to be a monolith of prejudice, but a connoisseur of excellence.'"

"Surely parents have a right to expect the board of education, as required by the Ontario government, both by the



ministry and by the Ontario Human Rights Commission, to see that their rights are protected in the environment where their children are being prepared for adulthood. There should be no discrimination against parents because they choose to affirm their responsibilities for the raising of their children. Presently, parents in Ontario who are not satisfied with the secular approach of the tax-funded public school system are grossly discriminated against when they seek options compatible to their own family values and commitments.

11 a.m.

"In the bill, reference is made to family. It seems the concern about banning discrimination based on family has to do primarily with accommodations and does not reach into the areas which have to do primarily with what can be characterized as family orientation. Such a ban would protect the family from the imposition into parental spheres of responsibilities of the government agencies advocating values alien to those of the parents. It is obvious, for instance, that to ban discrimination based on sexual orientation will be to force on parents and the classroom, through the role modelling of the teachers, the advocacy of a lifestyle that parents reject.

"I am strongly supportive of the human rights of everyone and, because of that, I am concerned about the old saying, 'Your right to swing your arm stops at the end of my nose.' Obviously, there has to be a protection of the human rights of those most directly involved in the classroom, the parents, from those who would exploit that classroom situation to impose an alien set of values or lifestyle on the children and parents.

"Some of the committee members had been offended by the well orchestrated and persistent hammering of the militant fringe of the homosexual community to have included in this Human Rights Code a ban on discrimination based on sexual orientation. Such antifamily militants, in my view, do a disservice to the cause of the legitimate human rights of homosexuals, and it makes my decision more difficult, as I am prepared to defend the fundamental rights of homosexuals. But when it comes to the classroom or other areas in which parental rights are primarily at stake, I find most offensive any suggestion that the law should give special privileges to a minority group whose common characteristic is that they have chosen or learned behaviour of a lifestyle such as the homosexual orientation."

We have heard arguments that this is not environmental, that it is genetic. I do not know whether it is my belief, my religious upbringing, but I am going to tell you that as far as I am concerned the determination of sex is made in the early stages of embryonic development. God structured females for a certain purpose and God structured males for a certain purpose, and I happen to think that sexual orientation is not genetic but it is a learned behaviour. Maybe that is a belief that I am going to come to regret someday; I do not know.

"These are my views, John, but I must say that they are shared by many of the people with whom I have discussed this particular matter."

In order to further emphasize that point, I have a note here from Reverend P. F. Mooney of St. Boniface Church, which says,

"Dear Jack,

"I am finally sending you a note of encouragement in your battle on human rights in Ontario. It is particularly gratifying to see your distinction between natural rights to such things as freedom from discrimination as to race, colour and religion, and unnatural rights--and he has in brackets 'or sin'--"such as homosexuality, clearly against nature. Do not let them put them on the same level. Keep on fighting.

"Sincerely, Reverend P. F. Mooney."

So you see, I am not talking just on my own behalf. I have given this matter serious consideration and I have talked to people in my riding, members of the cloth--not just Catholics. I have talked to many people about this and they happen to agree with my views on this. Therefore, I am saying that if we are going to include such things as sexual orientation, then we are taking some fundamental rights away from people who thought that they had these rights and who thought their predecessors had pioneered this country and had fought for some of those basic rights.

It is now very difficult for someone like me to come along and say, "Well, I am afraid you have no rights, my friend. If you are a parent of children and we include this, then you are really not going to have any say as to who will be helping your young people to shape their destiny." So that is the argument that I have to make.

Again, I have to congratulate and pay tribute to my colleague who takes the opposite stand, and who has probably put it far more eloquently than I, as to why she believes sexual orientation should be included. I just happen to think that at this time it should not be included, and I tell you I am speaking on behalf of a good many people, as far as I am concerned, from across Ontario.

Mr. R. F. Johnston: Here are some letters I should like to read into the record. One is from my mother, the first letter I have received in years.

Hon. Mr. Elgie: Is she disappointed in you?

Mr. R. F. Johnston: As usual, yes, good Liberal that she is. I have to admit as well that I have talked to nobody about this issue. I have kept it entirely to myself and my views are my own.

Last night I was greatly moved both by the motion of closure and by Mr. Riddell's speech in favour of property rights, and so I bought into Suncor. I thought I would just let all of you know that. As a result of this new acquisition of shares, I have noticed a change in my attitude about this whole business of sexual orientation, and I am willing to come up on the other side of the issue at this point.

Interjections.

Mr. R. F. Johnston: Let the record show that it is true that this miraculous acquisition of property has just turned me upside down, as it were.

Hohn. Mr. Elgie: Have you been saved?

Mr. R. F. Johnston: I have that feeling of being born again. It is a strange kind of experience. There are lights and--we can go into that later. I did, however, want to raise a couple of things with Mr. Riddell.

Hon. Mr. Elgie: We all thought you were lost. That is why I asked.

Mr. R. F. Johnston: Yes. You are a good shepherd, but that is another matter altogether. I find it interesting in the letter from Reverend Mooney, about whom we have heard so much and whom I would really enjoy meeting at some point or other, on this notion that we have to distinguish between these natural bases, like colour and race and ancestry, and the moral questions and sin.

I would draw Mr. Riddell's attention to section 9(h) on the definition of marital status, which says, "means the status of being married, single, widowed, divorced or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside of marriage." It strikes me that is not a matter of natural basis, like race, et cetera; that is a matter of choice, of decision-making, a matter of moral values.

If one were to look at the Bible, as did my good friend Mr. Laughren, that expert on the New Testament especially, but with too many throwbacks to the Old Testament, one can find any number of examples of quotations to do with the nature of sin in terms of living together outside of a sanctified marriage setup.

When we are talking about not including something other than those basic matters of race, et cetera, in this bill, I just want to make it very clear that as the bill presently stands we have done so; we have taken a move which a number of years ago would not have been acceptable within our society and which even for some people today is still not a moral value of which they would approve. I think the nicety of that distinction is something that we should be fairly clear on.

I also found it interesting in the letter you read, Mr. Riddell, that you commented that your major concerns were in terms of the school system and teaching kids, yet yesterday you spoke against the inclusion of sexual orientation in terms of access to services. That is not a distinction that you made very clearly in your letter just now.

This will be the last time I will speak on this because there is no sense in bashing our heads against a brick wall on this. Of course I support the inclusion of sexual orientation throughout this section as something which is an important addendum to the code, and I believe that without too much further ado we should have a vote on this and move on to other matters.

Mr. Chairman: Is there any other comment?



11:10 a.m.

Mr. Eaton: I have just a very quick comment on a couple of the things said last night in regard to the support of the churches before our committee. I think it was emphasized very strongly that it was churches that were represented. In reviewing the presentations, I think you will find it was many individuals who were involved with the church in one way or other as ministers, but not a general support of the inclusion by churches.

I think if you go to the grassroots of many churches you will find that kind of support is not there, that what Mr. Riddell has expressed in his letter is quite a strong feeling amongst many church people and individual churches and church groups, and that those who were before our committee were not necessarily representative of churches in a broad general sense, but individuals who came before the committee. I think it is rather important that should be clear.

Mr. R. F. Johnston: The only exception would be the Primate of the Anglican Church who wrote a letter on behalf of the church, as you will recall.

Ms. Copps: The Hamilton Conference of the United Church also wrote a letter, and I indicated that I would be tabling a letter before the committee of the whole, which will be from the United Conference of Canada.

Mr. Eaton: That has not been decided in there. I guess that there is some discussion within the United Church on whether that should be supported or not. Being a member, I have expressed my views to my minister and those who represent us.

Ms. Copps: You had better get in touch with them.

Mr. Eaton: I already have.

Mr. Laughren: I wonder if members would agree that there would probably be any number of things you could put before the church which are now embodied in law, of which it would disapprove. If you use that as the benchmark for legislation, then you are going to have some massive amendments to make as a governing party. I really question the logic of wrapping yourself in the church in order to make an argument.

Mr. Eaton: Nobody is doing that. I was clarifying what was said last night by those who were using the churches generally in support of the amendment.

Mr. Chairman: Are you clear that this amendment now is dealing with sections 2, 3, 4 and 5 and a couple of subsections? All in favour of the amendment? Those opposed?

Motion negatived.

Mr. R. F. Johnston: Let the record show we have dropped a vote since last night.

Mr. Chairman: Is there anything else on section 2(1)?

Mr. R. F. Johnston: Yes. I believe I had presented a motion at one time which would have included some of the matters that are left out. The specific one in this case is the matter of record of offences again, which is not included in this list. Was that in that initial package of things I gave the clerk? If it is not, I shall move it now.

Mr. Chairman: Mr. Johnston moves that in part I, section 2(1), before the words "or the receipt of public assistance" the words "record of offences" be inserted after the word "handicap."

Mr. R. F. Johnston: The reason I have moved that, Mr. Chairman, is that although the minister might argue that in the case of enjoyment of services there is no discrimination against an ex-offender, I would defy the minister to say that in the question of accommodation there has not been discrimination against ex-offenders. If we are going to try to reintegrate into our communities people who have served their time and paid their dues to society for mistakes they have made, then I think it is incumbent upon us to include in that matter of accommodation some sort of general protection for people with a record of offences.

When we come down to the matter of the small landlord, et cetera, we have a coverage for that, so for those who are worried about having somebody with a criminal record in a home where somebody has opened up a couple of rooms within the home, there is still the possibility of having the exclusion there, as we have done with other categories. But in the general principle, within a high-rise in the city of Toronto somebody who has paid his dues and gone through the parole system, et cetera, should not be denied accommodation.

It seems to me that is an important thing to be added in. I think we can argue that, like the enjoyment of a recreation club or the use of a library, it is the kind of thing an ex-offender might very well run into. Another tenant in a building might realize that somebody has had a criminal record and go and tell the superintendent that is the case, and then the pressure is put on to leave. I am sure that the John Howard Society or the Elizabeth Fry Society would be happy to give us instances of peoples who have been thus discriminated against.

I think it is an important addition to this general principle of accommodation, forgetting the notion of the small landlord operating within his or her own home, who is going to have more control over the type of people he has in his dwelling than the landlord of a large building. Any reaction from the minister on that?

Hon. Mr. Elgie: I think I went into detail on our views in areas other than accommodation, for public assistance and employment with regard to record of offences, and I have nothing to add to that.

I would like to say I was in error on a couple of things. Saskatchewan does not have record of offences anywhere, and the federal government does have it in other areas besides employment. I was in error there.

Mr. R. F. Johnston: There is nothing wrong with being first on occasion. It is a matter of natural justice. Do you not agree that in the matter of accommodation there is discrimination against ex-offenders?

Hon. Mr. Elgie: I do not think we have evidence of that. In any event, we are directing our attention to the area of employment and I do not think I can add to what I have already said.

Mr. Riddell: Reluctantly, I would be inclined to agree with Mr. Johnston if we are dealing with minor offences such as stealing a car--a young boy's prank is quite often to steal a car--or stealing something out of a store and they have served their penalty. But let us go back to the situation we read about a year or two ago where a chap raped three of his daughters-in-law and ended up getting five years, and another chap raped a two and a half year old baby and ended up getting two years with parole in less time.

Maybe I do not understand the pardon system, but in the case of these two chaps, the one who raped the two and a half year old girl and the one who raped three of his daughters-in-law, after they serve their penalty can they get a pardon? If they applied for a pardon, are they apt to get a pardon?

Hon. Mr. Elgie: My understanding of the criminal pardons act of 1970 is that in summary convictions there has to be a delay of three years and in indictable offences, which is what you are talking about, there is a five-year delay, at which point an application for a pardon can be made. The RCMP carry out an intensive investigation and the matter is then heard before an appeal board. So there is time and there is evidence of a change in life.

Mr. Riddell: Assuming they did get a pardon, would not a young couple with a small family of kids, ranging, say, from two to seven or eight years of age, feel terribly uneasy if in a small apartment dwelling they discovered suddenly that this guy who had raped three of his daughters-in-law or the one who had raped the two and a half year old baby was living in the same area, walking the same halls where these kids were out playing? I can see a real uneasiness on the part of people like this.

This is the part that bothers me. I am prepared to see those people who have served their term and have been rehabilitated given their just rights the same as everybody else, but here again are you taking rights away from other people? Does it mean that this young family that is sharing the same apartment, to get rid of its uneasiness, is going to have to leave that apartment by virtue of the fact that this chap was allowed in there? I do not know. I would like to support Mr. Johnston, but I can also see the other side of it; I can see the real uneasiness that some people would have.

I had a case in my own riding where a chap got into trouble and got treatment at the psychiatric hospital and they released him. He was not out very long before he shot his own mother right on the front lawn.



Hon. Mr. Elgie: There are more do that who never went into psychiatric hospitals.

11:20 a.m.

Mr. Riddell: Yes. You think they are rehabilitated, but then you can never be too sure. I do not know, it is a real dilemma as far as I am concerned.

Mr. Eakins: We are speaking of record of offence of those who have received a pardon, while Mr. Riddell is speaking of people who have committed these crimes. Is there any evidence as to people who have received a pardon and then created a further problem?

Hon. Mr. Elgie: I do not think it has been in effect long enough really to give us that.

Mr. Eakins: How long has it been in effect?

Hon. Mr. Elgie: It was passed in 1970 and we have to wait five years for the first person to be eligible.

Mr. Eakins: So there is really no evidence at all?

Hon. Mr. Elgie: There are good sociological studies that have been done to confirm that if someone has a five-year period, he is investigated, his employment and other reputation in the community and so forth are established, and the board hears the evidence. They have to be pretty firmly convinced that there has been a change in direction.

Mr. R. F. Johnston: I understand the sensitivities that Mr. Riddell is speaking to here. It is a concern for people in general. I think the minister has spoken well in regard to the process to be gone through for pardon. It is true that as yet we probably do not have a large enough accumulation of data to know what takes place, but I know of several instances of offenders in my riding, who have applied for pardon now and have been ruled unacceptable for pardon. There are three whom I can think of which involved violent crimes. It strikes me that there is a certain amount of protection there.

The parallel that Mr. Riddell made between mental illness and the offence is not a bad parallel in some ways because the dilemma is there for us in society in terms of the commitment of somebody to an institution, whether it be for a crime he has perpetrated and then paid his dues or whether it is to do with somebody who is committed for reasons of mental problems of one sort or another.

When somebody is committed to an institution the rights are taken away from that individual, but the moment he is released from an institution he must be, under law, seen as the rest of us are, that is, in command of his faculties. That is how the judgement is made.

It strikes me that although that causes some difficulties from time to time, it is one of those rules which is absolutely essential. We are all, in my view, slightly mad one way or another, or on the borderline of flying out one day to the next. The more I am in the House, the more I think that is a very regular kind of occurrence.

Hon. Mr. Elgie: You live in the wrong environment in the House though. You are subject to more than we are as Tories.

Mr. R. F. Johnston: I think it is important that we understand that this rule of thumb for somebody who is allowed to leave a psychiatric institution is absolutely necessary. We must give back the basic rights to that individual as we have those rights in the community. There are so many more cases of people who commit a violent crime without ever having been incarcerated for a mental disorder than there are people who have been in with mental problems who then go out and commit a first violent crime.

What I would like to emphasize here is that we are talking about the general principle of the right to accommodation for somebody with a record of offences. We are not talking about the need to protect the small landlord or the family which takes somebody in, which is something I think we can deal with specifically as we go further into it, because there are sections of the act that deal with the smaller landlord and we can be careful about that.

It strikes me as actually crucial that we give the right to accommodation and the general thrust of that right to people who have not only paid their dues in terms of serving a sentence, but have been seen through the process of investigation and appeal to have been rehabilitated in such a way as to now have received a full pardon. If we do not do that, then we are essentially denying the validity of the pardon, that the pardon must surely give back to that individual his full civil rights. If it does not, then what is the meaning of that pardon? I would essentially say that it is very meaningless indeed.

Mr. Eaton: How do we define record of offences here to mean someone who has a pardon?

Hon. Mr. Elgie: That is the definition of it under the definition.

Mr. R. F. Johnston: Under section 9(i)(i).

Hon. Mr. Elgie: That is right. What it would mean is that an application form, for example, could not say, "Do you have a criminal record?" It would have to say, "Do you have a criminal record for which you have not received a pardon under the Criminal Records Act?" But at the interview, if that person is selected on a short list on the basis of his or her qualifications as one of the few best able to do the job, then the employer would have the option of inquiring into all matters, including a record, if he deemed it to be relevant.

Mr. Eakins: I wonder if I could ask the minister for a little clarification, certainly for myself personally. You have placed this in employment but not in accommodation. Could you explain again the difference other than the federal act.

Hon. Mr. Elgie: I just said the federal act covers a wide variety of things, but there are not many areas under federal jurisdiction that deal with accommodation. You and I both know that, so it really has no relevance in that legislation. Let's be quite honest, we are doing something here which is probably pretty pioneer stuff in terms of North America, let alone any other jurisdiction. It is our view that the first area that should be approached is the area of employment because rehabilitation into society--as my friend Mr. Johnston has said--involves getting a job. If you are the best qualified or a qualified person, you are the kind of person we are trying to offer that opportunity to get back into society.

Mr. Eakins: So then accommodation, in your view, should be the next step.

Hon. Mr. Elgie: Let's see how it goes, but I think we have to move. We are offering some leadership here. There are lots of objection to even going this far. You know that. You read the papers as well as I do. I think the key issue facing those with records that have been expunged is employment, and that is what we are addressing with this bill.

Ms. Copps: I am sorry, you cannot have it both ways. Ten minutes ago you said that one of the reasons you were not including it was that it was not included in the federal code. Now that you have discovered it is included in the federal code, you are saying it is not relevant. Which is it? Is it either not relevant or is it not included?

Hon. Mr. Elgie: I was correcting an inaccuracy in my information to you.

Ms. Copps: I know, but you said to this committee on the last section that the reason we voted only for employment was the federal code only covers employment. Now you are saying what the federal code covers is irrelevant.

Hon. Mr. Elgie: No, I am not saying that at all.

Ms. Copps: You just said it.

Hon. Mr. Elgie: I am trying to point out to you that every legislative jurisdiction has some dilemmas about matters to put in this code. If you think that is not true, then you are not living in the real world.

Ms. Copps: I am just saying you cannot have it both ways.

Hon. Mr. Elgie: I do not want to get into an argument with you. What I am saying on behalf of the government is that we feel the area of employment is the key issue vis-a-vis those who have had a pardon, and that is the area we intend to address.



Ms. Copps: The reason I raised that is that you did say 10 minutes ago that the reason you were not including it in any other area than employment was that it was not included in the federal code. Now that it was brought to your attention that it was included in the federal code, you are saying that the federal legislation is not relevant.

I would like to point out two points. First of all, one of the things we have to take into consideration is that this act is not a rehabilitative act, it is a human rights code. As you know, the person who gets a pardon has to have already demonstrated that he has been rehabilitated. It is not the function of this act to be rehabilitating people, it is the function to see whether or not they have been rehabilitated. Once they have been rehabilitated, they go through and receive a pardon on the basis that they have been rehabilitated, and then they should be treated like everyone else.

There is one thing that maybe is not clear to the committee; it certainly was not clear to me until a couple of years ago. I had an opportunity to represent a constituent who had been refused bonding before the Ontario Police Commission. He was applying for a position as a security guard and filled out his application form. He had been given an unconditional discharge and was under the impression that with this unconditional discharge there would be no record of offences.

In fact, he filled out an application form in which he said he did not have a criminal record because he was left with that impression afterwards. I think the offence involved was a fairly minor offence, something like shoplifting, where he received an unconditional discharge. He went to get bonded and filled out this application form saying he had no criminal record. In fact, they ran a check on him and it showed that either pre-pardon or post-pardon, he would still have a criminal record. I think a lot of people are under the impression that once you get a pardon, for some reason your criminal record becomes a thing of the past. In fact, that record is always kept.

As the minister has just stated here, in certain instances an employer will still have access to that information in a post-interview period. You are talking about rapists; that is one consideration. First of all, from the limited experience I have had in the judicial system, most of those people would probably end up in Penetanguishene and would never be in a position to get a pardon because they could not prove rehabilitated activity.

You are talking also about a lot of people in this province who have been, in that very instance, discriminated against in filling out an application form because they were guilty of shoplifting. You are talking about people who have been guilty of any offence. Even on an unconditional discharge, they have a record.

I laud the government in including the principle of record of offences in employment. I think it is a very positive thing because you are also taking a look at the context. That is the context that a person has committed the offence, served his time, or in some instances received an unconditional or conditional

discharge, waited the prescribed period of time, applied to Ottawa, provided the necessary community documentation to verify the fact that he is now a fine upstanding citizen and then been granted a pardon and at this time will not be discriminated against.

He has already faced a penalty of anywhere up to five or seven or nine or ten years, depending upon the conviction and the length of the duration. So I do not think you can separate employment from accommodation or from services. If the minister is correct in saying that there is no problem other than employment, then he should have no problem with including it because I am sure the Ontario Human Rights Commission will not be overburdened with complaints.

It would just seem to me that the logic of including it in the area of employment should extend itself across the board. If you are opposed to the notion of having a person who has a record of offences be given equal treatment under the Human Rights Code, then that should apply across the board.

If you are not opposed to the notion, as obviously the minister is not because he has seen fit to go out on a limb and include it in the area of employment, then I think you should. By your own admission it may not be a problem in other areas; therefore there should be no problem in including it in other areas, bearing in mind the fact that the individuals involved have already gone through the legal problem of getting a pardon and proving they are rehabilitated.

We are not talking about people who are in half-way houses or have just got out of prison. We are talking about people who have demonstrated before the federal government that they are rehabilitated and are now upstanding members in the community. They have received a pardon. How long does it stay with someone?

Mr. Chairman: I think we have fairly aired this one. Are you ready for the question? All in favour of the amendment? Opposed.

Motion negatived.

Mr. Chairman: Anything else in section 2(1)?

Mr. R. F. Johnston: I was not here on the first day, Mr. Chairman, but I gather the matter of political belief was raised in terms of section 1(1). I am wondering if we should maybe do the same thing--

Ms. Copps: Across the board.

Mr. Chairman: We did it across the board.

Mr. R. F. Johnston: Too bad. I really did want to speak to that.

Mr. Chairman: Mr. Renwick did speak to it across the board.

Hon. Mr. Elgie: He let you deal with the preamble, so it is all right.

Section 2(1) agreed to.

Hon. Mr. Elgie: I believe there is an amendment on section 2(2).

Mr. Chairman: Mr. Eaton moves section 2(2) of Bill 7 be amended by striking out the words "or his agent" in the second line and substituting therefor the words "or agent of the landlord" and by striking out the word "section" in the second line and by striking out the word "family" in the last line and substituting therefor the words "family status".

Mr. Riddell: Would you read the amended clause, Mr. Chairman?

Hon. Mr. Elgie: It is in the draft bill as amended. It is 2(2) in the redrafted bill.

Mr. Chairman: Mr. Eaton moves that the new clause read, "Every person who occupies accommodation has a right to freedom from harassment by the landlord or an agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance."

Hon. Mr. Elgie: If I may just comment on that, Mr. Chairman, sex is removed because as you recall in my opening statement and as you will see from the reprinted bill, sex in relation to harassment and accommodation is moved down into 6(1), so sexual harassment and solicitation in general are dealt with in one section to avoid confusion. Secondly, a change with regard to the agent of the landlord is an effort to have this bill written in nonsexist language as much as possible.

Mr. Chairman: Is there any discussion on (a), (b) or (c)?

Motion agreed to.

Mr. Chairman: Anything else on 2(2)?

Section 2(2) agreed to.

Section 2, as amended, agreed to.

On section 3:

Mr. Chairman: Mr. Eaton moves that section 3 of the bill be amended by adding the word "status" after "family" in the last line.

Motion agreed to.

Mr. Chairman: Anything else on 3?



Mr. R. F. Johnston: May I ask a question, rather than moving a motion and immediately having it defeated? Why was it that some of the other areas were not included, such as contracts, for instance, or people on public assistance?

Hon. Mr. Elgie: Pardon?

Mr. R. F. Johnston: Why was it felt that it was not important to protect people who are in receipt of public assistance as regards contracts?

Hon. Mr. Elgie: Surely the issue, and you know about it as much as I do, for people are on public assistance is the area of accommodation. You reported a study in the House today. I do not know the details of the study or its validity, but certainly it was a common interpretation that there were people being denied accommodation or being evicted from accommodation simply because they were on public assistance. Surely those decisions should be made on whether or not people have shown a pattern of being able to pay their rent and behave like good tenants, not whether they are on public assistance.

When you get into the area of contracts, you get into areas related to the obtaining of loans, bonding and so forth. We did not think it was appropriate in Ontario, particularly since we are endeavouring to identify and relate it to the very problem you have identified yourself, that of accommodation.

Mr. R. F. Johnston: I am speechless.

Section 3, as amended, agreed to.

On section 4:

Mr. Chairman: Mr. Lane moves that section 4(1) of the bill be amended by striking out the word "in" in the first line and substituting therefor the words "with respect to" and by striking out the word "family" in the last line and substituting therefor the words "family status."

11:40 a.m.

Motion agreed to.

Ms. Copps: I also have an amendment to section 4.

Mr. Riddell: Boy, the Tory members on this committee have been doing their homework, haven't they?

Hon. Mr. Elgie: Well, why don't you do your homework and read an amendment? Why don't you introduce this next amendment? Come on, show us there is a community effort in your party and that you do not have all lone rangers.

Ms. Copps: Let the record show that Mr. Riddell will be supporting this amendment--please? It is going to have to be an amendment to the new amendment now.

Mr. Chairman: Ms. Copps moves an amendment to section 4(1) to read: "Every person has the right to equal treatment and equal pay for work of equal value with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap."

Ms. Coops: It is basically including the principle of equal pay for work of equal value directly after "treatment" and before "with respect to." Does everybody have a copy of that?

Mr. Eaton: We had a copy to share here so we are satisfied.

Mr. Chairman: I think everybody understands what is before us. Any discussion on this?

Ms. Copps: The reason that this notion has been introduced is that I think the issue of equal treatment, in essence, tries to capture the idea that people will not be discriminated against in any area of employment on the basis of sex, et cetera. I think it just introduces the notion of equal pay for work of equal value as a principle that should be upheld by the human rights commission. Certainly it is a position that we, as a party, have endorsed, and I believe that it has also been endorsed by the New Democratic Party.

I am not sure whether the Conservative Party has taken a position on it as a principle, but I think when we are talking about the Human Rights Code we have to take a look at the largest majority of people in this province, and that is women. The problem of equal pay for work of equal value is growing. It is not a diminishing problem. The fact is that women's salaries are slipping in relation to men's salaries in 1981.

Mr. Eaton: If you say it only affects women, you are discriminating right there.

Ms. Copps: Well, you know that I am covered under section 14, so it is all right. In any case, it is in that context that I have asked that the principle of equal pay for work of equal value be enshrined in the human rights legislation.

Mr. R. F. Johnston: Mr. Chairman, when Ted Bounsall moved Bill 3 in the Legislature, I was able to participate with my maiden speech, on which I did two or three weeks' work. I was up third for our party and was not really clear on the rules at that time. As I rose to speak, the Speaker said, "The chair recognizes the member for Scarborough West"--there was thunderous applause from my colleagues--and he added, "You have one minute." I said, "But, Mr. Speaker, I have been working on this for three weeks." He said, "You have 45 seconds."

If I could just remember how I did that speech, because we won the vote, and if I could somehow summarize it again into 45 seconds, perhaps I could convince the minister to include the notion of equal pay for work of equal value at this point,

although I doubt it. I think the principle is vital for the cause of equality of opportunity and treatment in employment for women who, especially in our society today, are the group which is primarily being discriminated against in terms of this whole principle.

I would suggest that my party, through Mr. Bounsall, has had this as a party policy for years. It has moved it in the Legislature and was responsible for getting the open debate on this issue which came up. Unfortunately, it was never pursued and enacted in law.

I know the minister has strong feelings about this issue because he responded to the initiatives of Bill 3 by beefing up some of the present legislation by getting more inspectors and that kind of thing. I would hope he would see that this would be an important principle to get included. I, therefore, support the motion of the member for Hamilton Centre (Ms. Copps) on this matter.

Mr. Eaton: I would like to speak in opposition to this. It seems it comes up that it is a position of work of equal value based on men and women's jobs. I do not think it applies just to that situation at all. It applies to trying to find out, in a business or wherever, particular positions and comparing the value of those positions to the company and deciding whether they are equal or not. In other words, somehow in an office one is going to have to decide whether the manager's job is of equal value to the company as that of the salesman or of the janitor.

Particularly in a small business, that could be very difficult. You have the chap in a small-town lumber yard who is running the office part of it and doing the books, et cetera. Then you have somebody else out working in the yard who is loading the trucks. It does not matter whether it is a man or woman. How are you going to determine whether the work that one person is carrying on is of equal value to the work that the other person is carrying on in that company? In effect, the company has made a decision somehow--and it is pretty hard to figure sometimes how they make that decision--that one job is worth more than the other. At that point we should be concerned whether discrimination is taking place or not, for instance, whether they have decided that the manager's job is worth \$20,000 and they hire a man and pay him that, or they accept a woman for the management position and say, "We are only going to pay you \$15,000 a year."

You can get into that situation in almost any position. I do not think it is as much a question of work of equal value as of whether, for the same job being done, a man and a woman are getting the same pay. That is a point we have to be concerned about, whether that kind of discrimination is taking place. If I am hiring salesmen and say, "I am going to give you \$20,000 a year," and I hire a woman at the same time for the same job and say, "I am only going to give you \$15,000 a year," then I am discriminating, and that case can be dealt with under the Employment Standards Act.



I would like the minister to comment on that aspect of it, if he would. I think he could clarify whether discrimination in that regard could be dealt with under employment standards. Just to say that we are going to include equal pay for work of equal value puts a lot of businesses to an onerous exercise of trying to compare values as regards particular jobs in their companies. For that reason I would certainly oppose the amendment.

Mr. Riddell: You spoke just long enough; it was well timed. Who went out to get you?

Mr. Eaton: I might have repeated myself a couple of times.

Ms. Copps: Call the question.

Mr. Chairman: Do you wish to comment, Mr. Minister?

Hon. Mr. Elgie: I would, but we have had a call for the question.

Mr. Eaton: I would like a quick comment from the minister.

Mr. R. F. Johnston: Is this more closure?

Hon. Mr. Elgie: We don't agree with closure in this government. Mr. Eaton is quite right.

Mr. Chairman: Is there any objection, Ms. Copps, to the minister answering his question?

Ms. Copps: No, the minister can speak now.

Hon. Mr. Elgie: Gosh! Thank you, ma'am.

Ms. Copps: I just thought we might sneak something in before--

Hon. Mr. Elgie: No one would ever accuse you of trying to sneak that in.

Mr. Eaton is quite right. The issue of equal pay is addressed in the Employment Standards Act in this province, as indeed it is in most provinces, except for Quebec. We have chosen to address it in terms of comparing similar jobs rather than comparing dissimilar jobs, which is equal pay for work of equal value. I do not want to go through the lengthy arguments that were submitted in the House, when Mr. Johnston gave his eloquent 45-second speech, nor the lengthy debates which took place at committee hearings on Bill 3.

The government's position has always been that although the concept has appeal and has an abstract principle of equity, it is a very difficult one to see putting into practice, particularly when we live in a society where market forces establish the wages that people receive.

11:50 a.m.

It is our view that strong enforcement of the equal pay for equal work provisions, along with our own government's example of affirmative action to encourage the placement of women in more senior positions in government, as well as encouraging private industry to recognize the need to encourage women to enter nontraditional jobs, is the proper approach to deal with the income discrepancies that face women in society.

I might add, Mr. Chairman, as well that the National Academy of Sciences, which at the time we debated this in Bill 3 had come down with its interim report, has now come down with its final report and has concurred that the matter is not one which in its view should be dealt with in legislation, but rather that business should be encouraged to make continuing efforts to introduce nonsexist job evaluation programs, inadequate though they may be at this time, and that continuing efforts should be made in those areas.

Ms. Copps: What about minimum wages?

Hon. Mr. Elgie: Do you want your salary to go up or down?

Ms. Copps: Government intervenes on that level. I do not really see the big difference. Why do we not let market forces prevail with the issue of minimum wage? Obviously you are establishing a benchmark.

Mr. R. F. Johnston: I think we should follow Alabama and have have right to work.

Mr. Chairman: Is that a motion? Do you want that added to this bill, Mr. Johnston?

Mr. R. F. Johnston: I just noticed that we are so tied up here with other jurisdictions and we have been ignoring Alabama for far too long.

Mr. Chairman: Are you ready for the question?

Ms. Copps: Yes.

Mr. Chairman: All in favour of the amendment? Opposed?

Motion negatived.

Section 4(1) agreed to.

Mr. Chairman: Mr. Lane moves that section 4(2) of the bill be struck out and the following substituted therefor: "Every person who is an employee has a right to freedom from harassment in the work place by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap."

Hon. Mr. Elgie: Mr. Chairman, the same reason could apply to that one as in sections 2(2). Sex is put into an all-encompassing provision in section 6 with the the nonsexist provisions eliminated and status is made coincidental with the balance of the bill.

Mr. R. F. Johnston: I agree with this and have a question for the minister as soon as we dispose of that.

Mr. Chairman: Do you want to dispose of that?

Mr. R. F. Johnston: Sure.

Motion carried.

Mr. R. F. Johnston: My question is in terms of the omission of one of the other items, that of receipt of public assistance. Given the fact that we have in Ontario now a program called the Win program, a work incentive program, which is under the auspices of the Ministry of Community and Social Services, an assistance program to family benefits women to get back into the work force, which gives them the work incentive to participate--these people are in receipt of public assistance and yet they are in the work force--is there any concern, in your view, that these people may now be liable to receive harassment on the job because of their status and have no protection under the Human Rights Code to be able to state that, for instance, they are being held down, kept at the minimum wage level, denied access to promotion, et cetera, because they are on public assistance?

Hon. Mr. Elgie: Mr. Johnston, I cannot crystal-gaze into the future, nor can you. I am told by the minister that they are not encountering those sorts of problems, but if they do and if it evolves that is an issue, then certainly it is one of the type that we have never hesitated to address in the past, but I do not propose to add it at this time.

Mr. R. F. Johnston: So we shall have to have an amendment come forward at some time in the future to the Human Rights Code in order to deal with that. Here we are today. It just seems to me like a very useful time to do it. But I will not bother moving it; I am tired of the votes.

Section 4(2) agreed to.

On section 5:

Mr. Chairman: Mr. Havrot moves that section 5 of the bill be amended by striking out the words "and enjoyment of" in the first line and second lines and substituting therefor the words "with respect to" and by striking out the word "family" in the last line and substituting therefor the words "family establishment".

Motion agreed to.

Mr. Chairman: Ms. Copps moves that section 5 of the bill be amended by inserting after "self-governing profession" the words "unincorporated sports organization".

Ms. Copps: I believe this addresses the concern that was raised by Bruce Kidd when he came to the committee, and that is access to unincorporated sports bodies. You will recall that



historically the government has attempted to cover that issue by including unincorporated bodies at a point later on in the bill, but a couple of years ago when the human rights commission upheld a finding against the Ontario Minor Hockey Association for not including a girl, that finding was not upheld by the Supreme Court on the grounds that you could not make findings against an unincorporated body.

This is just a further support to the plug in the loophole that I believe already has been proposed in the amended code. I think it specifies very clearly that unincorporated sports organizations will be subject to the same public access requirements without discrimination on the basis of race, creed, colour, et cetera, including sex, as every other trade union and professional organization.

I think it is an attempt to respond to the amendment that was suggested by Bruce Kidd. He would have suggested another more elaborate amendment, but I think this covers it in this section. That is my rationale behind suggesting this amendment. I think it gets into the issue we were talking about, Mr. Johnson and his granddaughter, and it is an attempt to make sure that it is spelled out in the code that unincorporated sports organizations will be subject to the same nondiscrimination that applies to the community at large.

Mr. J. M. Johnson: Mr. Chairman, I would like to speak on behalf of my granddaughter. I really have mixed emotions on this. I support the concept that girls should have equal rights in sports. I also accept the fact that it would create havoc with sports organizations. It is a two-sided coin and, regardless of which way it comes up, it is not going to satisfy all the parties.

I understand that the minister has set out the principle and is going to have a committee set up to investigate the feasibility of possible changes, if necessary, in the future, but certainly to look into the problem. I really have to accept it. At the present time, I think it is likely to be more beneficial to society to maintain the status quo than to make a change. While I may feel personally that I am letting my granddaughter down, I hope that we can come up with a satisfactory solution in the very near future.

Mr. R. F. Johnston: I support the amendment. Having played now on a hockey team with the member for Hamilton Centre (Ms. Copps), when I have been high-sticked, cross-checked, tripped and gouged, I do this with some reluctance because it is bringing an element of violence to the game which I have never seen before.

12 noon

However, I do feel that the points were well made by Bruce Kidd when he made his presentation to us, and I think the motion presented by the member for Hamilton Centre speaks to that desire and our party supports that concept. Then we just have to try to make the women and girls who get involved in sports slightly less aggressive, I think, in terms of their potential danger to the young men on the ice especially. With that proviso, that we can deal with that through the governing bodies of sport afterwards, I am totally in favour of this motion.

Mr. Riddell: Mr. Chairman, as usual, I wish to support my colleague in her amendment.

Hon. Mr. Elgie: But are you going to? Do you have a letter there from anybody?

Mr. Riddell: There were very convincing arguments put forth, I know, at the time the committee was listening to the various presentations. As Mr. Johnston indicated, Bruce Kidd certainly responded to some of the reservations I had. I just could not see girls participating in sports where there is a lot of body contact, such as hockey.

Hon. Mr. Elgie: Mr. Johnston wants that though.

Mr. Riddell: He seemed to allay my fears and indicated that it would not take away from the hockey game in any fashion because if the girls are going to play hockey they had better go in with the idea that they are going to be draped across the boards the same as the men are.

Mr. Laughren: Bad choice of words.

Mr. Riddell: I am just using hockey terminology.

Mr. R. F. Johnston: That was "draped".

Hon. Mr. Elgie: You are stick-handling.

Mr. Riddell: Anything that you might read into what I say is only a reflection of your own mind. I think there are some girls who would have made excellent goalies in the hockey sports and certainly, I suppose, if they can play hockey--I do not know what girls would be like on a football field as it is a pretty rugged sport, but I suppose if they choose to take that kind of beating, they will do it.

Interjections.

Mr. Riddell: I am prepared now to support this amendment but, as I say, I had some really serious reservations about it before I had an opportunity to listen to what Bruce Kidd and some of the others who made presentations along those lines had to say.

Mr. Chairman: I do not think the committee would object to standing it down until Ms. Copps comes back.

Mr. R. F. Johnston: She is just involved in a tag team wrestling match and will be here very shortly.

Interjections.

Mr. Stevenson: I, too, certainly have some sympathy with the feelings expressed here. I suppose I am a little bit concerned that we are opening up some problems that have not been too prevalent yet. Personally, I have no problem with girls being in amateur hockey and so on. However, to open it wide open, I am a little bit concerned as to what may happen if a boy who fails to

make the boys' volleyball team then goes out and tries to make the girls' volleyball team.

I suppose before I make a decision on it I would like to see the input of the committee that is being proposed to really seriously investigate the problems of implementation. I am much more worried about the implementation than whether they are involved or not. Local teams may allow a person of the opposite sex to play on a team and they may well get into playoffs. If they go on to a point beyond their own league, are they going to have players disqualified? It is potentially a very messy issue just from procedure and mechanism.

We should have some of those answers and a more serious look at it before I would be prepared to support it. I will vote against it here, awaiting the recommendations and the investigation of the committee that will be set up to look at it.

Mr. Eaton: I would almost have to oppose this solely on the grounds that the other day when we played hockey Sheila Copps knocked me down and I was too much of a gentleman to get up and hit her back. I am being a little facetious--

Mr. Chairman: About being too much of a gentleman to hit her back?

Mr. Eaton: No, strictly speaking, I can support this. I feel there is a lot of room for competition that can include both men and women. Some women, and I know it boils down to that side of it in this particular case, have certainly raised their level of skill to the point where they can compete with men in sports and so on. In our village hockey league they let the girls play in the minor sports program.

What does concern me a bit is incorporated or unincorporated groups. I fail to see some difference here. Also I see a problem in a case of suing unincorporated groups over a civil rights issue as to how to handle that, and also what kind of groups it gets down to. There are some legitimate cases where it can be just men's or women's sports taking place. It may be a fairly unorganized sort of situation. Is somebody going to come along and say, "Okay, I am going to charge them under the act"?

Who in a group becomes responsible at that point, if it is just a bunch of the guys or girls gathered together on some sort of a team they have got together to play on Sunday morning or something? How do you determine who is responsible if they just sort of make a collective decision to have a boy's hour of playing hockey?

For that reason I have some concerns over the amendment. I know that the minister, because of some of the urgings of members of our own party, is going to carry out an in-depth study into it and come up with some recommendations. I support his doing that and would like to see what he comes up with before we make any amendments to the act. On those grounds I am going to have to oppose the amendment, but I support the principle.



Mr. Eakins: Would this amendment mean that an organization such as the Ontario Minor Hockey Association would still be allowed to have male and female teams if they wished?

Ms. Copps: May I speak to the amendment. What it addresses is the case where there is a female player. There was a case in the past where a female player was good enough that her male counterparts wanted her to play on that team, but she was denied access to the league.

There was a finding against the Ontario Minor Hockey Association on the basis of that case, which was not upheld in the court because it was determined that since the Ontario Minor Hockey Association is an unincorporated body, it is not bound by regulations that cover corporations.

Mr. Eakins: The courts upheld the Ontario Minor Hockey Association.

Ms. Copps: Right.

Mr. Eakins: The point the Ontario Minor Hockey Association was making was that it had no objection to girls playing hockey or to integrated hockey, but it maintained that it had the right to have male teams if it wished and female teams if it wished. I think it should have that right.

12:10 p.m.

Bruce Kidd appeared before the committee, and he must have have changed his views since 1972 when he co-authored a book. I just want to read into the record a comment from page five of that book. "Hockey also teaches the difference between boys and girls. In 1956, nine-year-old Abigail Hoffman, who went on to become one of Canada's greatest Olympic athletes, played defence for the St. Catharines Teepees and the Little Toronto Hockey League. When it was discovered she was a girl, she was immediately dropped from the team." In his next line, he says, "Playing hockey is for boys." That was Bruce Kidd in 1972.

The point I want to be sure of is that the Ontario Minor Hockey Association still has the opportunity to have all-male teams or all-female teams or integrated teams if it wishes, rather than rushing in to say if they are good enough to make another team, they should be able to. I think their objection is not on the basis of not supporting integrated teams, but that they are asking for the right to be able to have certain teams that they wish.

Ms. Copps: According to this amendment, any person--

Mr. Eaton: I thought you went out to get another supporter for the amendment.

Mr. Eakins: I am just asking what it means.

Ms. Copps: I put the amendment, and you have a copy of that and you have had it for some time; we did discuss it. The

amendment means you would have to allow any person to play who was of that calibre, let us say of Junior A hockey. If you had a person who was of Junior A calibre and who happened to be a girl, she would have to be admitted to that team. I think the University of Toronto was the example that Bruce Kidd used. To talk about Mr. Eaton's objection, they do have some male students on their field hockey team, which is in a predominantly women's league, and it has worked out fine. It is based on ability rather than sex.

Of course, the process of natural selection would mean that in most instances boys of a similar age, particularly in the seniors, would be perhaps physically stronger than girls. In the junior age, I think that Abigail Hoffman is a good example that that is not necessarily the case. Just recently, in the Robbie Burns tournament sponsored by Air Canada, one of the teams had a girl who happened to be a star and was not allowed to compete in the tournament which was invitational. The team withdrew because all the boys on the team felt that she was equally capable, that she was in fact the star of the team. They did not want to participate in the tournament without her.

We are talking about people who have equal abilities at a certain age level. That would eliminate the possibility that a hockey player would be thrown out simply because she is female.

Mr. Eakins: Or in track and field.

Ms. Copps: Yes.

Mr. Eakins: In other words, there would be no more men's relays or ladies' relays.

Ms. Copps: It would be based on ability.

Mr. Eakins: Am I right? I am just asking. This does not necessarily mean that you could not have a men's relay any more?

Hon. Mr. Elgie: In the Olympics.

Interjections.

Ms. Copps: It would be based on merit. For example, at the University of Toronto there is no discrimination on the basis of sex, but there still are women's teams and men's teams, based on the level of participation. The understanding is that, particularly at the the senior ages, women's musculature is perhaps somewhat less developed than that of their male counterparts. Therefore, notwithstanding my hockey game with Bob Eaton, there is an assumption that most men would want to be on the men's team and most women on the women's team. I think that you are going to find that the matter will arise in very few exceptions, only where there is an exceptional female athlete who is of the calibre to play in the boys' league, as it were. This amendment would give her that right.

The Ontario Human Rights Commission, in its judgement of some years ago on that issue, has already said that you could not discriminate on that basis. The reason that finding was overturned

by the Supreme Court was not on the grounds of discrimination on the basis of sex, but because the court found that, since the OMHA was not an incorporated body, it could not be bound by the Human Rights Code. That was basically what they said.

Mr. Chairman: In fairness, Ms. Copps, I think that Mr. Eakins' question has been answered.

Ms. Copps: Okay.

Interjections.

Mr. Eaton: You should have heard what Richard Johnston said about your hockey playing, your slashing and gouging.

Mr. J. M. Johnson: Mr. Chairman, on a point of order: Mr. Eakins asked a question of the minister. I would like the minister's comments on that question.

Hon. Mr. Elgie: I do not think it will be any mystery. You can tell from the discussions here that there is certainly no unanimity of opinion among our own caucus on the issue. It is certainly not in my own mind either. Having a daughter with considerable skill who has not had access to certain sports facilities, I have considerable interest in the area, but I think we all have to acknowledge there are changes taking place.

Mr. Stevenson will tell you, and has told you, about changes taking place in his community. Changes are taking place in the universities. There are a variety of issues here. It is not a simple issue and let us not pretend it is. Ms. Copps has referred to some physiological differences. There are some sports authorities who think that in sports under the age of 13, in other words under the age of puberty, there should be no distinction made on that, but it should be solely on the basis of merit. There is disagreement about what happens after that. There are physiological problems that many have tried to face in their reviews of literature.

Let us not kid ourselves, we are talking here as well about ingrained, historical traditions--at the golf club, ladies' tournament, men's tournaments and boy's tournaments. I am not saying whether they should or should not be. I am telling you those are ingrained historical traditions in this province and indeed in most provinces. There are certain social attitudes that many parents have. Now I know there are good arguments on both sides and so do members of my party, and I have to tell you that there is no unanimity one way or the other.

But we do feel there has been no broad exploration of the issue which would have two purposes; one, to explore the issue and to report to the government and, secondly, to serve as a very valuable educational process for society to have the minor hockey leagues and the minor softball leagues, including parents like myself who has a daughter with considerable skill, come and tell about the problems they have faced, and then deal with it (a) having had some educational process take place and (b) having had a thorough review of all of the historical as well as the physiological and social aspects of it.



It is not out of any disagreement about concern in this area, but rather it is an issue we feel should first be addressed in the way we have proposed in our statement.

Mr. Laughren: It is the first time I have heard the minister use the word "concern" all day.

Hon. Mr. Elgie: I will use it more often if you like. I know it is a word you like to think you have sole claim to in your party. You do not have a monopoly on it.

Mr. Laughren: You have laid to rest that bit.

Mr. R. F. Johnston: You can use it more times in a day than our whole caucus.

Mr. Laughren: I, of course, support the member's amendment. I did want to clarify one point. I think John Eakins--I wish he was here--was drawing the wrong conclusion from Bruce Kidd's words. I believe when he said hockey is for boys, that he was mocking, being facetious, and I do not think his views have changed, although if he was here he could better defend his own remarks.

I think, too, that the age thing is what bothers people in sports. It is what happens after the age of 14 or 15 or whatever. Up to that point it is really sad to see girls who have the skills excluded from competing at their own level of ability. If it was based on merit, surely we could all go along with that. I know there are always reasons for maintaining the status quo on any issue, but this is one whose time, I think, has passed.

Ms. Copps: Can I wrap up since it is my amendment? It is not the minister's amendment.

Mr. Chairman: I heard a lot of wrapup there when you were answering questions, so how about keeping that in mind as you are wrapping up.

Ms. Copps: If that was my wrapup, then I would prefer to be the last speaker since I moved the amendment.

Mr. Chairman: I said you could wrap up.

Ms. Copps: I think one of the things we have to bear in mind is that this amendment will certainly not eliminate men's golf games or men's golf teams and women's golf teams, and to suggest that is patently absurd. If you take the historical argument as an argument for continuing of the policy, there is historical precedent to say there are so many things that people in this province have been discriminated against on the basis of race and on the basis of creed. I mean historical argument is not relevant. I think what we are looking at here is aiming an amendment at those very few individuals who happen to excel.

I also wanted to clear up the record on the argument of physiological differences. I think the minister was correct in drawing the line between pre- and post-puberty. I think in the pre-puberty instance there are many circumstances where girls and boys compete equally.

That is where this whole issue comes into question. I do not think you are going to see many post-puberty women applying to compete in sports organizations that are predominantly male. We have had examples of them in the past. As early as five or six years ago, there was a woman who was hired to play in the National Basketball Association. She did not cut the mustard and she was dropped. Fine, she had the opportunity to compete, she did not measure up and she was dropped.

This amendment would not alter the fact that an individual has to be on a competitive par with the other people on that team. All it is saying is that in an instance, as in the very recent Robbie Burns tournament, where a team is disqualified or a player is disqualified even though she happens to be the star of a team or the best hockey player in the whole tournament, the only reason there for being disqualified is that one happens to be a girl.

You are aiming this amendment at a very small number of people who happen to excel in that area. If you talk about Abbie Hoffman, she went on to become one of this nation's greatest athletes, and maybe it was because of the opportunity for her at that time when she was playing in the guise of a boy, if you can imagine. Maybe that gave her some of the background she needed to become a world-class competitive athlete.

You are talking about those very select few who would be above the norm, who would be world class, and we have lots of precedent in this province for saying that girls and boys can play together and men and women, as evidenced at the University of Toronto.

I think you will find that socially most women will prefer to join people of their own sex on a team as will most men. But you may find a situation where a woman or a girl is able to cut the mustard on an age level that is equal to her own, but just happens to be of the opposite sex. This amendment would allow her that option in an unincorporated sports organization.

We are also not talking about a group of fellows getting together on Saturday morning to play hockey. That is certainly not an organization. It is a loose-knit group of friends and, heavens, I think you are still allowed to choose your friends. When I came to play hockey two weeks ago when we had the members' hockey game, I believe it was the first time a woman had ever come out. I did not notice any great objections and, although I am not the world's greatest hockey player, I am presently hoping to organize a basketball tournament where I do intend to show my prowess. I think in that kind of a pickup game, if it had been told to me that I was not wanted, I would have left. I am not wanting to force myself on anyone.

Mr. Eaton: That was only when you walked into our dressing room.

Ms. Copps: I certainly do not think that would be grounds for a fine under the Human Rights Code. We are talking

about minor sports organizations where there is an odd individual who is a singular individual and who should be given the chance to compete at the best level for that age group, whether it be male or female. So I would ask you to support the amendment.

Mr. R. F. Johnston: I feel obliged to clear up the record. Just because Bruce Kidd seems to have been misinterpreted earlier on, when I was making my comments about high sticking and tripping and that kind of thing earlier, all those comments directed towards the member for Hamilton Centre were facetious. I want to be very clear about that. None of them was real.

Mr. Chairman: All in favour of the amendment? Opposed?

Motion negatived.

Section 5 agreed to.

Mr. Chairman: I think this is a good point to adjourn until eight o'clock tomorrow night.

The committee adjourned at 12:24 p.m.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, NOVEMBER 5, 1981



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

/Substitutions:

McClellan, R. A. (Bellwoods NDP) for Mr. Laughren  
McGuigan, J. F. (Kent-Elgin L) for Mr. Riddell  
Pollock, J. (Hastings-Peterborough PC) for Mr. Havrot

/Also taking part:

Kerrio, V. G. (Niagara Falls L)  
Miller, G. I. (Haldimand-Norfolk L)  
Wildman, B. (Algoma NDP)

Clerk: Richardson, A.

/ Research Officer: Madisso, M.

/From the Ministry of the Attorney General:  
Stone, A. N., Senior Legislative Counsel

/From the Ministry of Labour:  
Armstrong, T. E., Deputy Minister  
Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon. R. G., Minister  
Hess, P., Director, Legal Services

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, November 5, 1981

The committee met at 8:12 p.m. in room No. 228.

THE HUMAN RIGHTS CODE  
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario:

Mr. Chairman: I call the meeting to order. Last meeting, as I understand, we had carried section 5, part I. Anything on section 6?

On section 6:

Mr. Stevenson: I have an amendment to section 6.

Mr. Chairman: Mr. Stevenson moves that section 6 of the bill be struck out and the following substituted therefor:

"(1) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of sex.

"(2) Every person who is an employee has the right to freedom from harassment in the work place by his or her employer or an agent of the employer or by another employee because of sex.

"(3) Every person has a right to be free from,

"(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

"(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person."

Hon. Mr. Elgie: What we have done is move the old section 2(2) dealing with harassment in accommodation and the previous section 4(2), which dealt with harassment in employment on the basis of sex, into one section so that all matters related to harassment because of sex or solicitation are in one section for the convenience of people trying to follow the trend of the meaning we are trying to put across in the bill.

The other thing the amendment accomplishes is the elimination of the word "persistent." And it also, by the way, changes the definition of a person in authority. You will recall there were several people who appeared before the committee who had concerns about the definition of a person in authority. Our counsel felt, and I agree, that we should clarify that, thus the new wording we have here in this amendment.



Mr. J. M. Johnson: Mr. Minister, on section 6(1), "Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of sex," I am not sure I understand the last part "or by an occupant of the same building because of sex." Are you saying tenant/tenant?

Hon. Mr. Elgie: Tenant to tenant, that is what we are talking about.

Mr. J. M. Johnson: So they do have the right to be free from that problem, but how do you make sure that they are free from it?

Hon. Mr. Elgie: Let us take a situation where one tenant is being harassed by another, and I had a situation like this the other day in my own constituency. By the definition in section 9(g), if that is a course of "comment or conduct that is known or ought reasonably be known to be unwelcome," then that tenant is free to bring an action or complaint before the human rights commission which would then, of course, investigate, and if they felt it was a valid complaint, try to conciliate and bring the two tenants together.

If they were unable to do so, then they would have to make a decision as to whether or not a board of inquiry should be appointed. If a board was appointed, then it would be between those two parties. They would have to establish that there was a course of conduct, that it was unwelcome, and if during the course of that inquiry it became apparent that the landlord, for example, knew it was happening and had ignored it, then the landlord on that occasion could be enjoined by the board, not for the purposes of imposing any demands on him but simply so that he was made fully aware of the problem.

If there was a recurrence, then section 40 states that if there was a recurrence, and again the landlord was aware it was happening and condoned it by not doing anything, then on that second occasion, in addition to the remedy between the two tenants, a landlord who had condoned it on two occasions would be required to take some action.

Mr. J. M. Johnson: But that leaves a problem with me. Would the landlord, at that point, have the option of evicting that tenant?

Hon. Mr. Elgie: There would be several options. One is that he could do a variety of other things, give a warning or whatever in the first instance. In the second instance the board would direct him as to what he should do.

Mr. J. M. Johnson: The board would tell him what he can or cannot do?

Hon. Mr. Elgie: On the second occasion. The first occasion would be just so there is no doubt he knew what was going on. If it happened again and again under those circumstances, he knew it was happening; then in those circumstances a board could require that he do something which might involve an eviction under the Landlord and Tenant Act.

Mr. J. M. Johnson: If we were to carry that through, it is my understanding that you cannot evict a tenant in, let us say, the middle of winter, you cannot throw someone out in the street.

Hon. Mr. Elgie: That would be a matter of evidence before the court.

Mr. J. M. Johnson: But this will be taken into consideration?

Hon. Mr. Elgie: That would be taken into consideration in the application for eviction. But if you have two tenants--and this specific case is vivid in my mind--what happens in life very often and unfortunately is that the person being harassed moves out whether it is winter or whenever it is. He or she is told, "Well, if the kitchen is too hot for you, get out." That is not right. What we are saying here is that there should be a remedy between the two parties. If the landlord becomes knowledgeable on two occasions and fails to do something about it, then there is a requirement that the board can require that he do something.

Mr. J. M. Johnson: I am not disagreeing with it. The only concern I have is that it seems to fly in the face of another situation. I know the problems of evicting anyone, and good luck if you can do it.

8:20 p.m.

Hon. Mr. Elgie: They could always claim hardship. That would be a matter of evidence before the eviction hearing.

Mr. G. I. Miller: How are you dealing with that particular case? You said you have a problem now.

Hon. Mr. Elgie: He cannot do anything about it now because there is no access to any remedy. He simply has to sit there and listen to the names.

Mr. McNeil: Supposing it is taken to the court and the court rules that the one who is being harassed can be evicted. What can you do in a case like that?

Hon. Mr. Elgie: Then the landlord's hands are tied. He cannot be required to do something he cannot do.

Ms. Copps: Where in the changes in the legislation does it infer that there would be two violations before one could act?

Hon. Mr. Elgie: Do you have the old bill or the revised?

Ms. Copps: This is the revised.

Hon. Mr. Elgie: Under section 38(2)(e) in the revised bill you will see, "where the complaint is of alleged conduct constituting harassment ... any person who, in the opinion of the board, knew or was in possession of facts from which he or she ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct," and did not do so can be added as a party. That is stage one.

Ms. Copps: I understand that could constitute a single violation; it does not necessarily constitute two violations.

Hon. Mr. Elgie: Between tenant and tenant it is a different issue. But then under section 40(4) where a board, having enjoined such a landlord, for example, finds that a landlord was in possession of knowledge from which he knew there should be an infringement, and had the authority to do something about it but did not, it says, "...the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the commission may investigate the complaint"--the recurrence-- "and request the board to reconvene and if the board finds that a person"--in this case a landlord--again knew and did not do anything about it, even though he had the authority to do so, then "the board may make an order requiring the person to take whatever sanctions or steps are reasonably available."

Ms. Copps: That is in section 40, but particularly with regard to section 6, it may well be that if this section passes, section 40 can be amended and altered, which would not allow you to have prior knowledge or prior warning of the situation, if section 40 is amended when we arrive at section 40.

Hon. Mr. Elgie: Whatever views you have about the steps a landlord or an employer might be required to do would be dealt with in subsequent sections.

Ms. Copps: Yes. So there is actually nothing in section 6 which states you have to have prior knowledge.

Hon. Mr. Elgie: No, but I was asked by Mr. McNeil what the steps would be.

Ms. Copps: You are presupposing that those would be the steps if section 40 is not amended.

Hon. Mr. Elgie: Yes, I have that feeling.

Ms. Copps: I wonder why.

Hon. Mr. Elgie: It has come over me.

Mr. McClellan: We support the amendments that the minister has brought into the original bill as really major improvements over the initial drafting. There have been all kinds of comment in objection to the previous language which permitted persistent sexual solicitation or sexual harassment. It was kind of like the-- What was the legislation we dealt with?

Hon. Mr. Elgie: It was the vicious NDP act.

Mr. McClellan: The vicious NDP act, in which the dog--

Hon. Mr. Elgie: At the first silly bite it had it was taken away.

Mr. McClellan: That's right. Everybody dog has its day.



I simply want to indicate that the NDP not only supports the amendment, but commends the ministry for the change which we feel is a major improvement.

Hon. Mr. Elgie: I will just say that the last two lines of section 6(3)(a) do involve, of course, the initial knowledge. In other words, the person has to know or ought reasonably to have known that it was unwelcome.

Ms. Copps: I would just like to reiterate the comments made by my colleague from the NDP. We had already proposed an amendment to the previous legislation to delete the word "persistent." I think the amendment proposed by the minister falls in line with that concern and the consideration that was expressed by a number of groups. So we will also be supporting the amendment.

Mr. McClellan: I do not think there is any other way of dealing with this. Just dealing with the section that the minister referred to, I would assume that the interpretation of what constitutes an advance that the advancer ought to have known was unwelcomed will rest with the discretion of the commission or board. There is no other way to deal with that, and we will have to see on the basis of litigation how that works out.

Motion agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

On section 8:

Mr. J. M. Johnson: I have an amendment.

Mr. Chairman: Mr. Johnson moves that section 8 of Bill 7 be struck out and the following substituted therefor:

"8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this part."

Hon. Mr. Elgie: Mr. Chairman, I would like to say the reason we proposed this amendment is that on reflection and discussions with counsel, who is here tonight if anyone would like his comment, our feeling was that the phrase "or do anything that results" really exposed the possibility of very remote effects. We thought that the words "directly or indirectly" resulting in an infringement dealt with the matters we were intending to deal with; and that the phrase "do anything that results in" really was a pretty long bow and would get beyond not only wilfulness, but even beyond recklessness, into things that a person might not reasonably have foreseen could happen.

That is the sole reason for the change, and I might say the reason this section is here per se is, as those of you who recall the old act in the green book will recall, that each of the sections had a similar phrase in it.

For instance, section 2(1) used to say, "No person directly or indirectly, alone or with another, by himself, or by the imposition of another", and really that is "directly or indirectly." Since we changed the approach of the bill, this is simply a section which includes all of that in each of the previous sections, just as it was in the previous bill, but it was recorded in each section before.

Motion agreed to.

Section 8, as amended, agreed to.

Mr. Pollock: I will move section 9(a).

Mr. Chairman: I was just going to sit back and celebrate getting through part I. I think we should all go and have a party. That is enough for one night.

On part II, section 9:

Mr. Chairman: Mr. Pollock moves that clause (a) of section 9 of the bill be struck out and the following substituted therefor:

(a) "'Age' means an age that is 18 years or more, except in section 4 where 'age' means an age that is 18 years or more and less than 65 years."

8:30 p.m.

Hon. Mr. Elgie: Mr. Chairman, as I said in my opening statement last week, it was our conclusion that there were a number of areas or grounds in the bill where there was really not much logical reason to have 65 years as the upper age limit and, therefore, this section eliminates that age in terms of accommodation, services and facilities and contracts.

I know there are those who have other views and I have to tell you that there is a great deal of sympathy for those views with regard to the area of employment. But you will recall I said in my statement we felt this area had not been adequately explored in depth and I had asked the manpower commission to carry out such a study for me before any decision is made on that particular area. The pension committee, as you know, faced this issue as well; it is not an easy one and let us not pretend it is.

Ms. Copps: If I may suggest, the drafting error that was originally found in the previous bill has been continued in this bill. I do not agree with the notion that employment should be excluded as a prohibited ground of discrimination after the age of 65. However, if this amendment is the one to be suggested by the government, I think you would have to specify section 4(1) because you have a situation in section 4(2) where people who are over the age of 65 are employees. From the way the drafting is suggested at present, if you are an employee over the age of 65 you can be sexually harassed with impunity; that is the way you have drafted the legislation as it sits now.

What you are saying is that over the age of 65 there is no coverage under either section 4(1) or (2). I think you would have to at least admit that is so in section 4(2) where every person who is an employee already--and we know that there are situations where some people are employees over the age of 65--has the right to freedom from harassment in the work place by the employer, agent, et cetera. From a drafting point of view, you would have to restrict that exception to section 4(1) specifically.

Otherwise you are drafting legislation where you could actually have sexual harassment or harassment of any nature with impunity after the age of 65, and that is not acceptable. So, in that context, under protest I would have to suggest that the government amendment refer to section 4(1) specifically.

Hon. Mr. Elgie: Hold on a second. It seems to make some sense, although I hate to admit that.

Ms. Copps: I guess I would amend the motion to have the amendment read "section 4(1)." I do not know whether it would be appropriate for me to move the amendment since I am going to be then moving a Liberal amendment which would in fact circumscribe the areas of--

Mr. Stone: I think that is a valid point, Mr. Minister. Applying only to the over 65 does not affect the under 18.

Hon. Mr. Elgie: If Ms. Copps would not mind, she can either suggest that amendment to Mr. Pollock's motion, or else you can add it yourself, whichever you wish.

Ms. Copps: I will suggest that amendment to the original motion. I will be further amending it later on.

Hon. Mr. Elgie: Are you prepared to amend that to section 4(1)? It is a good point.

Mr. McClellan: I am sure it is a good point but I am not quite sure--

Hon. Mr. Elgie: What Ms. Copps is saying is that if you accept the government's argument that the age of retirement at 65 should remain as is for the time being, then it should apply only to section 4(1) which deals with employment, whereas section 4(2) deals with someone who is in employment already but is being harassed because of age. I think there is some logic to that. Let the record show that Copps and Elgie finally agreed on something, at least in public.

Mr. Chairman: Does the amendment to Mr. Pollock's motion carry?

Motion agreed to.

Ms. Copps: That is the amendment, but then we go back and vote on the original motion?

Hon. Mr. Elgie: Yes, we will come back.



Mr. McClellan: There seems to be another anomaly and I am not quite sure how to deal with it, maybe because I cannot read the instructions. I understand the problem, I do not understand the proposed solution. The problem is that there is a gap between ages 16 and 18 that is not covered.

Hon. Mr. Elgie: That is another issue.

Ms. Copps: That is another motion.

Mr. McClellan: Is somebody going to deal with that?

Hon. Mr. Elgie: Ms. Copps has a further amendment to section 9(a) dealing with it.

Mr. McClellan: Okay, thank you.

Hon. Mr. Elgie: But you do agree with the other one. Have you got your instructions there?

Mr. Chairman: So far we have the motion by Mr. Pollock that section 9 be struck out and amended as read and that it would be apply to section 4(1).

Ms. Copps: Mr. Speaker, after I have made the amendment and the amendment has been agreed upon, I would have to state--

Mr. Chairman: It is Mr. Chairman. After the way I have seen the Speaker treated, I do not want to be called Mr. Speaker.

Ms. Copps: Sorry, Mr. Chairman.

Mr. Chairman: I have no aspirations.

Ms. Copps: I would have to speak against the main motion, but the context of my argument will be addressed in the amendment. Basically, it is the belief by my party that 65 should not necessarily represent the upper limit for employment and we are suggesting, or will be suggesting, in the next amendment, as a compromise to the position that there be no upper limit, that the upper limit at the moment be increased to the age of 70. We cannot support the amendment that 65 be the compulsory retirement age in this province. I will speak further on that with our amendment as we are going to be presenting it later.

Mr. Chairman: Can you introduce your amendment?

Ms. Copps: I think we should vote on the original motion first, should we not? The government motion goes first and then we will present our amendment after that. We have a motion on the floor already.

Mr. Chairman: The government amendment is a replacement, really, of the whole section. I think if we do that we are finished. I think we had better entertain yours first.

Ms. Copps: Do you have a copy of my amendment? I believe it is section 9(a).

I actually have two amendments and I would really rather deal with them in two separate motions because I think some people may be able to support the 65 to 70 when they cannot support the 18 to 16. Maybe what I should do is move first a straight amendment in my name.

Mr. Chairman: Ms. Copps moves that section 9(a) be amended by substituting the word "sixteen" for the word "eighteen" in the first line.

Ms. Copps: Basically, our reasoning for lowering the low limit, which is what we are doing, from age 18 to age 16 is that throughout the deliberations when we had various groups that came and presented their presentations, there seemed to be an overwhelming consensus that the people who were adolescents and young adults between the ages of 16 and 18 seemed to fall into a vacuum and were not protected under the act and many of them were gainfully employed. Legally, they were able to leave home and go out and join the work force, and we did not see that there was a particularly consistent reason for applying the age of 18 and not the age of 16.

I know there have been presentations that there be no low limit. The rationale behind that would be to say that all people in this province deserve to have human rights. However, I think our party's position is that from a logical point of view, when you are guaranteeing basic rights in accommodation and employment, you have to recognize the fact that those basic rights are accorded to adults and under our law a 16-year-old is considered an adult.

From experiences in our own constituencies, we have seen many cases where adults between the ages of 16 and 18 seem to lack the protection under, for example, the General Welfare Assistance Act, and sometimes fall in the void. They are accorded the responsibilities of an adult in a court of law, and yet in this particular act they are not given the benefits of being an adult as regards employment and accommodation protection.

8:40 p.m.

I know we would all like to see a situation where our 16-year-olds and 17-year-olds stay home and enjoy the benefit of their families and their parents until they mature and are able to go into the work force. However, the realities of 1981 are that we have many teen-agers, in Toronto, for instance, who are living on their own, away from their parents, and being gainfully employed. We feel they deserve basic human rights protection under the act, and for that reason we are moving the amendment that the lower age limit be dropped from 18 to 16.

In various Ontario government statutes the age can change, for example, the minimum drinking age. We know there is a possibility that the act can provide for a drinking age that would be higher than the age of 18. This present code says age 18 and yet we know our drinking age by statute is 19. There will still be exceptions that can be applied through law, but we feel the

general principle should be that people who are over the age of 16, once they are able to go out and be gainfully employed, should receive the same protection as everyone else receives under the act for accommodation, employment and services.

For that reason, we suggest that the lower limit be reduced to age 16. We do not see it as an ideal for children or young adults to move out of their homes. However, we recognize that it is a reality and something we have to respond to. If we do not respond to it, these young people will be left in a vacuum. If we refer back to the presentation by a young 17-year-old who came here, there is definitely a problem out there. By lowering the lower age limit, we feel we are attempting to address that problem.

Mr. J. M. Johnson: I would take the opposite position. Ms. Copps mentioned that the drinking age, for example, is 19, and I hope and understand that we will cover that in some way in the bill. Then I would go to 16 as the age of majority if that is what we would wish to have. My concern is that I understand that if young persons of 16 remains at home, the parents have the responsibility of looking after them until they are 18, assuming their debts, et cetera. If they leave home at 16, I think they are responsible for their own debts.

But a problem comes in. I will use the example of a merchant who has a 17-year-old come into his store who wants to charge something and his driver's licence or his ID shows he is 17 years of age. How does that merchant know whether or not that young person is living at home? If he extends credit to him, the chances are that he will never collect it. If he extends credit and he is living at home, then he has to try to collect from the parent. It becomes a complete mish-mash of responsibility.

I think at the age of 16 to 18, they live at home when it is convenient and they live away from home when it is convenient. They can be at home if certain reasons that they should be there are apparent; if not, they are away from home. Really, it could be a loophole that would create a tremendous amount of concern for any merchant who wanted to deal with this group. You think it is a problem now, but I suggest if you bring this into this bill so that 16-year-olds have all the rights of 18-year-olds, but without the responsibilities, you will find that merchants will not touch them with a 10-foot pole.

These people will be neither fish nor fowl. You are creating more problems for them. At the present time it may be a bit of a problem for a few individuals, but it can create problems for more people by changing it. We have many pieces of legislation for that age group. People of 16 and 17 receive many benefits now than they would not receive if we were to change this code. I feel you would create more problems by changing it.

Mr. McClellan: I was struggling with how to phrase an amendment. I do not think I have managed to solve the problem, but I would be interested to hear from the ministry. I have to confess that the previous speaker's arguments did not sway me. I would like to hear from the ministry as to whether or not they feel that



Ms. Copps' amendment creates any problems in terms of other statutes, particularly with respect to the drinking age. She argued that it did not.

Hon. Mr. Elgie: I read some of the submissions that were made and I understand the point Ms. Copps is making. I would have made it a more narrow point, which I will discuss a little later on. There were a couple of things I did not agree with in her remarks. One was that no matter what age you are you should have human rights. This code does apply to all ages in terms of race, religion, creed, whether you are one or 90. What we are talking about is age.

She also made a comment that the law recognizes age 16 generally. That is not so. There are specific areas where 16 has, particularly in recent years, come into some position of legal recognition.

What Mr. Johnson was pointing out was that there is a difficulty in enforcing contracts against anyone who is below 18. It is a simple fact. I remember as a young law student writing an article, called *Sword or Shield*, on the very issue of the protection afforded infants under the age of 18 with regard to contractual obligations. They cannot be enforced against infants except for necessities of life. Then you get into the argument of what is a necessity.

I do not want to get into the moral debate of whether it should be 16, 17 or whatever. But it is a fact of life today that 18 is a contractual age when you become responsible for your actions.

Then there is the issue of the age of majority in addition to that, as Mr. McClellan alluded to, where there is certain legislation where, if you are not 18, you cannot consent to a variety of things, including consent to certain things under the Mental Health Act. There are some idiosyncrasies around like the Public Hospitals Act. You can consent to things that a hospital does to you, but you cannot consent to things that a doctor does to you unless you are 18. So there are odd little idiosyncrasies around that are very difficult ones.

In addition to that, we all know there are certain establishments that you are not allowed into unless you are aged 18. There are the admission prices for a variety of things like theatres and so on, where there is a special price if you are below 18. We have to remember that we are getting into all those things that exists in society. Mr. McClellan alluded to there being a number of pieces of legislation, the Child Welfare Act and others, that deal with the age of 18.

I suspect that is why other legislatures, albeit there are not very many that even get into this area-- Indeed, this code, as you will recall, dealt only with age in terms of employment in the past, and then only ages 45 to 65. That is what happens in the majority of provinces in this country. Most that have it, and not many do, have lowered the age to 18 for the very reasons I have mentioned, that there are a lot of contractual and age of majority problems that arise.

To make the case I think Ms. Copps was trying to make, there are certain changes that have occurred which do leave some people in no man's land. I understand that and it is a problem. The Family Law Reform Act, with its changes, does say that if there is a withdrawal of parental authority at age 16, someone can be deemed to be on his own. That is the group that it is a problem for. I understand that but I do not see an easy way to solve that problem, because if we attempt to, we get into many other problem areas.

8:50 p.m.

That is an area that, as legislators, we have to keep in our minds and look at. I do not say this because I have any adamant views about it. I just think we would be going a little too far in interfering with a lot of existing legislation, a lot of common law traditions and a lot of things that are built into society's function, if we were to move from age 18.

Have you got some instructions there, Mr. McClellan, that would prompt another remark? You are looking very agitated there.

Mr. McClellan: No. I think your last comment sounded like good grounds for supporting the amendment.

Hon. Mr. Elgie: I knew you would say that. I should not have supported her other one.

Mr. Johnson said that the drinking age of 19 was protected in the code. I think what I said is that you will notice under the primacy section that government has two years in which to introduce omnibus legislation over a variety of issues. One of those is the drinking age, for which, as you know, there was general support in this government and the opposition party. So that would have to be addressed within two years in order to have primacy, as will many other issues.

Mr. Eaton: By that do you mean you would have to introduce a clause that would cover it in this?

Hon. Mr. Elgie: It would have to say in the Liquor Licence Act that, notwithstanding the Human Rights Code, the age of responsibility for drinking purposes will be 19. There will be a variety of sections where that has to be done. Every ministry knows that and will have to explore its own statutes and introduce those amendments.

Mr. Eaton: It would apply to things like truckers' driving licences where they have to be a certain age.

Hon. Mr. Elgie: Yes.

Mr. G. I. Miller: But you said this leaves a vacuum. What Ms. Copps was saying kind of makes sense. Where is the vacuum you are referring to? Is it between 16 and 18?

Hon. Mr. Elgie: No. The Family Law Reform Act has referred to certain situations. The cases to date have dealt with children at the age of 16 who for problems at home--in one case

before the courts I think it was an alcoholic father--chose to withdraw, and the courts deemed they had withdrawn from parental authority. In those few situations, and they have not been many cases, where children at age 16 have for reasons that the court has legitimized withdrawn from the family, they have been deemed to be independent.

What I am saying is that by far the greatest common law principles--contractual principles, age of majority principles and statutory principles--recognize 18 as the age of majority. To introduce a change for one area creates a lot of problems in others. I am not saying we should not look at it, but it is an area of great problem.

Mr. G. I. Miller: But the other acts would come into play and supersede, wouldn't they?

Hon. Mr. Elgie: You would have to amend all that legislation. You would have to replace the common law principle. You would have to legislate common law. You know what Justice Biddell used to say about that. It always made sense until legislators intervened.

We also must keep in mind a principle that I think we were hearing from some people here today. We do not want to do anything which might be perceived by some, or indeed many, as encouraging 16-year-olds to achieve an independence from the educational system and from their families because there are people who have pretty strong views about the importance of that relationship and those ties. We have to look at the other side of that coin as well.

Mr. G. I. Miller: I would like to give you an example. I picked up a boy yesterday who came from Hamilton and he was a wealthy boy. He was at a court case in Cayuga. He said he only had grade 8 education and that his family kind of abandoned him. He admitted he was a drug addict.

When you are abandoned by your family, that leaves you at the mercy of the community and society. From what he told me, I just could not believe my ears. He is trying to come out of it now. I suppose he is maybe 25 years old. I suppose there is an area in there where they get taken advantage of and do not have any recourse.

Hon. Mr. Elgie: I think I have explained my views on it.

Ms. Copps: Just in wrapping up, I think Mr. Miller has really hit the nail on the head. The minister talked about access to education. One of the reasons I feel very strongly about this amendment--it was mentioned in committee, but I will mention it again for those of you who were not there--is that when I was working in Stuart Smith's constituency office, I ran into the very unusual situation of a boy in a similar circumstance who had been forced to leave home for circumstances which all of us do not like but do exist.



He was 17 and came to Hamilton and applied to the Hamilton Board of Education to go to high school in Hamilton. We intervened on his behalf because, since he was below the age of 18 and his parents were not Hamilton public school supporters, he was not allowed to register in the Hamilton Board of Education system. He was not guaranteed access to that system. I spoke personally with the superintendent of education.

He was 17 years old and he was forced to enter into a trusteeship agreement with another individual who applied for the trusteeship simply so the boy could register in high school in Hamilton. As you know, according to the regulations regarding payment of taxes, if your parents are not supporting that particular school system, you do not automatically have access to that system. So he had to enter into a trusteeship agreement with another individual, who really had no intention of taking him into trusteeship, because at the age of 17 it was rather ludicrous. He entered into the agreement simply so the young man could be allowed to carry on his secondary school education.

That is one instance that came to my attention in the short time I was working in the constituency office. I am sure there are other members who have faced that as well for these young people who really fall between the cracks of 16 and 18 and who, for some reason which may or may not be of their own causing, are forced to leave their parents' habitat.

I think the minister has clearly indicated that where there are problems with the drinking age or with other areas the government has time within the next two years to come in with statutory amendments which could clear up things like saying, "Okay, you have human rights but when it comes to the drinking age, 19 will still prevail."

Fine. The government will have the opportunity to set those restrictions over the next two years, but this is endorsing the principle and the restrictions will follow. I really think that for those young people who do fall into that category we really should try to protect them with a general endorsement in the Human Rights Code to say that yes, they do have access to public services like the education system, based on their own merits.

Mr. J. M. Johnson: Mr. Chairman, just on the point Ms. Copps raises, is there any feasibility, Mr. Minister, since there is the two-year gap, to bring in other types of legislation or changes to look after some of the problems? She has raised a concern that there is a group of people falling into an area that are not protected. Is there some way, other than protecting them with this legislation, by which we could address the problem, especially in the education aspect?

Hon. Mr. Elgie: The Mental Health Act, the Education Act, could all be addressed in that just as easily as the other way. My only point is that there are a lot of common law as well as contractual and statutory situations where 18 is the age by statute or common law. If other areas are to be addressed, then I think you are right, they can be addressed in other areas.

Having said that, I acknowledge that there is this limited area that is a problem, but I think we cannot solve everything in this bill. This is a major advance and I think it is one we should support.

Mr. Eakins: I just want to add I thought perhaps my situation was unique, in which I have had at least three young people come to me and I have had a mother call and say, "He cannot stay in this house any longer." That boy had some problems. I do not think he has completed his public school education and I often wonder what is going to happen to him.

Hon. Mr. Elgie: Do you think that giving him accommodation and employment rights will change that, or are you saying he needs help from the social service agencies? I mean that is what you are saying.

Mr. Eakins: I think he needs a lot of help, a lot of protection and a lot of support, but I was just saying that this situation is not as unique as one would think it is. I think it is much more widespread and I am wondering just how widespread it is. I do not know. But I have run into it just in my own small area several times. Even the parent will say, "He has to leave home. One of us has to go." It is hard to believe.

Ms. Copps: That is what my mother told me.

Mr. Stevenson: I have a question. What if you are an apartment owner or a home owner with an apartment and you rent it to a 17-year-old and he smashes it up or something? What recourse in law do you have on a person like that who has left home?

Ms. Copps: The Landlord and Tenant Act is the only recourse in a landlord and tenant situation.

Hon. Mr. Elgie: You have a right of action for those things that are necessities of life, but you are really talking about a damage action, which is different from a contractual action. You have a contractual action because accommodation would be a necessity of life, but a damage action would not be considered a necessity of life in common law and you would have to have a court action against him for the damages.

9 p.m.

To sue for those things, he or she would have to agree to have what is called a next friend. Someone would have to agree to take responsibility for it. That is the sort of problem I am talking about.

Mr. Stevenson: So you could go after him for nonpayment of rent, but not necessarily for smashing a hole in the wall?

Hon. Mr. Elgie: That is my feeling. You would have to have a guardian appointed first.

Mr. McGuigan: As an employer of many people over a long period of time, I can think of the names and faces of people whom I employed who were 16 years of age. One I can think of was a



runaway, but I can think of others who simply by force of circumstances were put out to fend for themselves; the father died or something of that sort. They were put in with gangs of men doing farm work and they had to keep up their end of it or they were not employed. Some of these people we made men out of and they went on and became--

Mr. Kerrio: Cabinet ministers.

Mr. McGuigan: Not quite that far, but they had the responsibility of earning their own pay and augmenting the family money.

Hon. Mr. Elgie: They moved to Niagara Falls actually.

Mr. McGuigan: I think of a neighbour, a very successful farmer, whose duties fell on him at 12 years of age. He makes speeches all over the country and brags about the fact that he became self-supporting at 12 years of age. I think that anybody who is forced into that position by circumstances deserves the protection the law can provide.

On this matter of payment to someone who might grant him credit, I often have people coming to me trying to collect from some of these people. I have not the slightest sympathy for them. They were avaricious, in my view, in selling something to a person who obviously could not pay for it. They will often sell them some sports car or some such thing like that. I say it takes two to make a bargain like that. You have to be an avaricious person--that is not always the case, but often I felt it was the case of these people granting credit where it should not be granted.

I do not think that that argument is relevant to the matter before us. As far as responsibility for wrecking an apartment goes, I have found they are more apt to wreck it at 18 than they are at 16. At 16 they are somewhat amenable to persuasion and a little more apt to listen to you than they are at 18. I have them wrecking them at 30.

Mr. Stokes: Mr. Chairman, I would like to ask the minister if there is any way in which, rather than enshrining this principle into this section, we would cover in blanket form everybody between 16 and 18. There are very cogent and legitimate arguments that can be made on both sides of the fence. I know there are a good many areas where no government would want to enshrine in law legislation that would hope to be a catch-all. It would be almost impossible. But they do set up tribunals or boards of review in the event that there is a problem in a specific area.

Is there any way that you can enshrine into this, if this particular aspect of this legislation becomes a problem for those between 16 and 18, particularly in services, that we can have a provision in the code that would allow the commission to set up a board to look into those things, just to make sure that it receives the proper scrutiny, without enshrining it in this law?



I can see where members of the committee here have trotted out specific problems in areas that are quite legitimate and really should be addressed, but I can empathize with what you say, that it may not solve the problems, it may add to them. If you had a tribunal with the power to at least look into these problems, very legitimate problems raised by members of the Liberal Party, is there any way in which you could set up a tribunal or a board of review under the auspices of the commission to look into these areas where there may be abuse of or discrimination against youngsters between those two ages who find themselves in this position?

Hon. Mr. Elgie: I think that what would happen is what happens now in matters that are outside the code, and that is that there is an informal complaint and an informal investigation and an informal attempt to conciliate the issues. I frankly cannot see how it could be done within the parameters we have talked about in the bill, that there has to be specificity and so forth. That does not mean we have to stop looking at it and thinking about it. I have said that I think there are some areas that need to be addressed, but I do not think we can do it right now in this bill.

Mr. Chairman: Is there any further discussion on this?

Mr. J. M. Johnson: Yes, it is just a question to the minister. Did you indicate earlier in your address to the committee that you are setting up a board, commission or tribunal, or whatever, on ageing?

Hon. Mr. Elgie: That is the manpower commission.

Mr. J. M. Johnson: Age 65 or over?

Hon. Mr. Elgie: Yes.

Mr. J. M. Johnson: Would it be feasible to suggest that possibly you take a look at the suggestion of Mr. Stokes and also take a look at those of age 18 and under?

Hon. Mr. Elgie: I think that is a good idea. I can expand the terms of reference of that study to involve at least the problems of employment because that is with the manpower review.

Mr. J. M. Johnson: Is that what you had in mind, Mr. Stokes?

Mr. Stokes: Yes.

Hon. Mr. Elgie: I think that is feasible, if I can expand his terms of reference.

Mr. G. I. Miller: Mr. Chairman, can I ask a question, the other way round now, from an employer's point of view? I was talking to the Turkey Point business association, and their concerns are, from an employer's point of view, does this give the right for anyone to come in and harass the employer?

Mr. McClellan: How do you mean harass?

Hon. Mr. Elgie: An employee?

Mr. G. I. Miller: Yes. They were afraid that the principle of the bill was going to take away their rights, and that people could come in and take them to court over simple little things, or take--

Hon. Mr. Elgie: An employer who is being harassed has the age-old remedy he has always had. He can fire the person, and this person is not protected from that under this act.

Mr. J. M. Johnson: That is what I indicated to them. It was just a tool they could use for their own protection, but the employers had rights too.

Hon. Mr. Elgie: Oh, sure, they still have their continuing rights to discharge.

Interjections.

Hon. Mr. Elgie: Now, Mr. McClellan, we have met in a spirit of conciliation here tonight. Do not read any more researchers' notes.

Mr. Chairman: Anything else on the amendment? You are all clear that it is to amend by substituting the word "sixteen" for the word "eighteen"?

All in favour? Opposed?

Motion negatived.

Interjections.

Ms. Copps: The second amendment to 9(a) deals with the issue of the upper limit, which has been a very controversial issue throughout. You probably have a copy of our amendment, which basically suggests that section 9(a) be amended by deleting "and less than 65 years" in the first and second ones, and substituting "except in section 4(1) where age means an age that is 16 years or more"--and in this case I would defer to "18 years" in view of the previous amendment--"and less than 70 years."

Basically what we are asking for is that the upper limit on employment be increased to the age of 70.

Hon. Mr. Elgie: Then it should say "70 or under."

Ms. Copps: "And less than 70 years."

"Eighteen years or more and 70 years or less"? 411

Interjections.

Ms. Copps: But you say "less than 65 years" in yours.

Interjection: That is right.

Mr. Eakins: You will be the Minister of Labour forever.

10 p.m.

Hon. Mr. Elgie: No, I am getting near 65. I shall have to go pretty soon. I feel 74, but I am only 52.

Mr. Chairman: You are comfortable with "less than 70"?

Ms. Copps: Yes, because I think you are talking about a five-year increase, which is 70 and out, rather than 65 and out.

I think that there have been a number of arguments. To my knowledge in the committee, with the exception of the Ontario Professional Firefighters' Association, most of the groups that have come to the committee and addressed the subject of ageing and compulsory retirement--and I think Mr. Lane will be able to empathize with this--have really spoken in favour of extending an upper limit. Our concern at the time of suggesting an amendment is, I think, that basically there is certainly a philosophical case to be made for having no upper limit at all and just fundamentally having an open-ended upper retirement age.

The age of 70 was introduced by our party, and all of our party is in agreement with this, on a conciliatory or a compromise basis in an effort to see, first of all, how the increase in the upper limit affects the labour market. That is one of the things we do not know to date, although we have seen the situation that has been developing in the United States, where it appears that maybe five to 10 per cent of the population may take advantage of the option to extend their time of employment. We are really not sure how that is going to develop in the future and, therefore, in an effort to have a controlled relaxation of the limit, we have suggested 70 as the upper limit.

We feel, however, that, regardless of what we may decide to do in this committee, the decision per se may at some point become redundant because we know that, more recently, most court decisions have ruled in favour of the plaintiff on an issue of compulsory retirement. It seems that, sooner rather than later, the whole element or idea of compulsory retirement will become a thing of the past.

A number of historical references as to how compulsory retirement came about have been introduced into the committee. It is certainly an outdated concept that is some 150 years old.

I would like to touch briefly on the argument that the compulsory retirement is critical in an effort to reinforce the revolving door syndrome. There are certain arguments that if we reduced or eliminated the upper limit on employment, we would not give our young people a chance in the job market, and that would certainly be a concern of the Liberal Party.

However, the research we have been able to look at to date shows that what has been happening in the age of the 1980s and in the age of microchip is that as people move out of the labour force, their jobs are being eliminated through attrition and there is no moving up the ladder of people from a younger age.



So we do not feel that the increasing of the upper limit to age 70 would be a detriment to the labour market. Heaven knows, we have enough examples, including provincial members of the Legislature, judges, many professional people, the president of the United States, senators, ad infinitum, of people who are able to carry on, and quite well, after the age of 65.

Mr. J. M. Johnson: Do you approve of Reagan?

Ms. Copps: I am not saying I am approving of Reagan's policies, but I recognize the fact that he is over 70 and it has not impeded his ability to think, however much I may disagree or agree with his interpretation of the facts.

Nevertheless, there are lots of precedents, particularly in the present day, if you want to take a look at Senator Hayakawa in California, Senator Croll here in Canada, John Diefenbaker--may the soul of Wilfrid Laurier rest in peace--and other eminent figures who were able to carry on far beyond the age of 65 and make a major contribution.

We have all heard the story of Colonel Sanders and Kentucky fried chicken. He started that business after age 70. To suggest that people should basically be put out to pasture at age 65 is, in our opinion, not a tenable argument. We think that under the present law we are discriminating against a certain segment of the population because, as I have said, people who are in the professional or quasi-professional fields generally speaking are left with a certain amount of liberty as to when they want to retire.

We are seeing it more and more. I know factories in Hamilton, in the community that I represent, where there is optional retirement, where the employer has not forced the employee to retire at age 65, and to date the option seems to be working quite well. We think that if the committee chooses not to endorse our recommendation, within the next few years you are going to see the accumulation of enough court judgements that restricting the retirement age to 65 really will become redundant.

We refer you back to the latest Gallup poll in which 66 per cent of Canadians said that they felt there should be optional retirement. We refer you back to the Air Canada judgement just recently, and basically to the notion and the principle that, particularly in today's society, where people are growing older at a greater rate and we know by demographics that, within the next 15 years, we are going to have a shortage on the labour market, we are going to need some of those senior people to get into the skilled jobs because they are just not being replaced.

We feel that now is an appropriate time to take a step in the right direction. That step would not be the lifting of the retirement age completely, but it would be the extension of the retirement age vis-a-vis employment to age 70, to give us a chance to see how that is going to affect the labour market over the next few years; and possibly in anticipation of the demographic changes, we may be prepared to face some of the constraints that we are going to be facing in the 1990s when we, in fact, do have a very critical labour shortage.

In that regard, we are suggesting an amendment that would increase the upper limit from age 65 to age 70.

Mr. McClellan: Our position on this amendment is consistent with the position we have taken whenever this trial balloon has been floated in the Legislature. We do not intend to support an increase in the age of retirement until such time as we have achieved pension reform in this country.

I do not want to belabour the point because we have made the argument innumerable times. We have still relatively few laws that protect working people, but those laws that we do have are really important to us in the New Democratic Party.

We have limited the hours of work and the length of time that a person is--

Mr. Eakins: Except here.

Mc. McClellan: Except here. That's right. Well, this is not work.

Mr. Stokes: Is there any place you would rather be?

Interjections.

Mr. McClellan: We have limited the amount of time that men and women are required to work over the course of their lifetime and we have passed laws limiting child labour. They are part of a series of laws that may be old, but have a long and honourable tradition behind them.

The reality remains that there is no pension system of adequacy yet in this country, and the first sentence in the report of the royal commission on pensions says precisely that. There is no system for the provision of retirement income in this country and 53 per cent of senior citizens are living on means-tested programs; in other words, they are on welfare programs. Whether we call them guaranteed income supplement or Gains, they are still means-tested, welfare programs. That is simply a reflection of the fact that we have yet to develop a pension system that meets the needs of a modern industrial society.

I am optimistic that we are making progress towards putting a pension system in place. The debate is currently under way; we have our own select committee on pensions that has tabled its first report and recommended a number of very important reforms to private sector pensions. Over the course of the next two years we expect that there will be major initiatives with respect to pension reform at the federal level.

We are quite prepared to accept an end to mandatory retirement, once the system is in place, to provide adequate income for each and every retiree, but we are not prepared to move in that direction until the threat of economic necessity is removed through the provision of pensions. My sense is that if we do it backwards and we raise the retirement age before we have put a pension system in place, what we are saying is that if you want a decent income beyond the age of 65, then stay on the job, because that is the only way you are going to get it.



In other words, we have to deal with the question of economic necessity first, before we deal with the question of raising the age.

9:20 p.m.

I think it should be obvious to people who are concerned with the wellbeing of ordinary working people that we have to proceed that way and not the other way around. If we go the route of raising the age first, we are just asking, I think, for a great deal of misery on the part of seniors.

It is all very well if you are a nice middle-class person in a relatively pleasant occupation, like any of us, and I am sure most of us in this room who have one of the better jobs on the face of the earth would like to be able to do that for a long period of time. It is a pretty nice job; there are no two ways about it.

Mr. G. I. Miller: It is not very nice when you see what is happening down at White Oaks and 83 people out of work and you have to take some responsibility for it. I do not think it is very nice.

Mr. McClellan: It beats working at White Oaks, let me put it that way.

We have the luxury, most of us, of either having this job on a long-term basis or falling back on some other fairly comfortable occupations or professions, and we do not have to worry very much, but the folks in my riding who work in construction and do not have decent pension plans are not very interested in proposals to raise the retirement age before we do something about the levels of pension.

Someone who is working as a bricklayer or cement finisher or a miner or heavy equipment operator is not really very anxious, thank you very much, to work to age 70 or beyond in order to maintain a decent standard of living. That is the kind of choice that this kind of measure puts before people in this country. I just say we have to deal with the income replacement issue before we deal with the age issue.

Mr. Lane: Mr. Chairman, I would have quite a bit of sympathy with the amendment that Ms. Copps has moved, seeing that I am 39 and holding and have been holding for a couple of years. I guess if the minister had not already told us that he had a commission set up to study it and report back, I would be tempted to support it at this time.

I can recall in the last five years we have had a private member's bill in the house, I think on two occasions. I know certainly Mr. Leluk had a private member's bill indicating that retirement age be raised to 70, and I think somebody else did. I think we had a kind of consensus in the House that that would not be a bad thing to do.



I think Mr. McClellan has made a pretty good point, that there is something else that has to be addressed before that, so that we have a reasonable income for those people who decide to retire at something less than 70, or less than 65 in many cases. S. Copps mentioned the aeroplane pilot with Air Canada, and so forth. There is going to be a question of what jobs involving the public can one do safely at any given age, depending on health and so on.

I really appreciate the fact that the minister has foreseen the problem and has arranged to have a committee report on this. I think at this point we would be hard put to put any age on there, whether the upper limit would be 70 or whatever, and I think we will have to address it in the next two or three years. I think Mr. McClellan has made a point that has to be addressed as well.

In spite of the fact that I am just a little bit over 39, S. Copps, I will have to not support you at this point in time, much as I would like to, because the minister has already told me that he is looking after me.

Mr. McGuigan: Mr. Chairman, I would like to support this amendment. I do so on the basis that every time I hear this argument about spreading the limited amount of work around, the person who makes that argument has to assume that there is some upper limit to the amount of work that needs to be done in this country.

I simply cannot accept that there is any upper limit in a country that has the resources this country has. Look around at the great problems we have in pollution of the lakes and rivers and streams and the work that needs to be done in cleaning those up; the problems we have in our forest industries and the amount of planting that should be done to bring them back to their full potential; the minerals that we have in this province that at times go unmined simply because there are not the skilled people to do those jobs. I just cannot accept that there is some limit.

When I first became aware of the population of Canada I think it was nine million people, and today we have 24 million. When we had the nine million we had a much higher unemployment rate than we have today. I suppose the unemployment rate then was in the neighbourhood of 25 per cent. That did not document all the people who have entered the work force since those days, the large number of women who have entered the work force.

The reasons that we have unemployment, I think, are of our own making. We could get into a great many arguments over what those reasons are, but I feel the lack of jobs is our own making, not some natural limit placed upon us by our lack of opportunities.

I think we are talking about a very small percentage of the population who would want to work beyond any set limit. As far as I am concerned, I would take any limit off, but for the sake of this legislation we are moving it up to 70. Those few people who love their work, who probably throughout their lives have not really prepared themselves for retirement--they do not have any particular hobbies; their hobby is their work--I think should not be prevented from carrying on.

I can give you some grass-root examples. When I was going to high school, throughout the summer I worked on my dad's farm on sort of a part-time basis. When I was about 16 he told me that it was on a 10-hour day, and in those days that meant 60 hours a week right up to Saturday night at six o'clock. It was a hell of a situation but that is what everybody did, so that is what I was expected to do.

So, looking for a nice soft spot in that system, I teamed up with a man who was in his 70s and we grew a lot of hoe crops. Of course, in those days we did not have the weed killers that are of assistance today, so it was a case of being on the end of a hoe for 60 hours a week. I was a fairly strong young fellow, going to school and taking part in some athletics and so on. I thought it would be a nice soft touch to go out with this man who was 70. I tell you that man nearly killed me. For that summer it was crawl into bed after supper at seven o'clock.

Mr. Eaton: It kept you out of trouble, did it?

Mr. McGuigan: You are damned right, it did. I crawled into bed at seven o'clock and pulled my bones out in the morning, aching with every move, at least for the first month. That old man in his 70s worked up to his 90s before he quit working.

Later on, when I assumed the management of the operation, I always looked for those retired people who were cast aside by industry, even one man who was cast aside by another farmer at 65. He worked for me for a good 10 years. Anyone in good health, with the right attitude and the skills that those people had, I looked upon as a find whenever I could get one of those people. If they do not want to work, they make the decision to drop out.

I remember reading about a group of people in Florida on retirement, a bunch of carpenters, who decided that during their retirement, they should take on some project. So they decided to build a house on speculation and sell it. These people gathered to build a house and got the foundation for it. The first day there was quite a crowd there, the second day there were a few more, but by the third day there was nobody there. The fact is that people who do not want to work quit, and this in no way forces people to work.

9:30 p.m.

I guess if we had a utopian situation I could support the idea that we would provide for all of these people. But I am afraid as our horizons expand and the standard of living rises and so on, we will never reach the point where we have an adequate system, with everybody being taken care of, with everybody above the poverty line and so on. As desirable as that is, I cannot see our ever reaching it. So I do not see that it is an impediment to allow those few people who want to work to continue to work. I certainly argue strongly in support of this amendment.

Mr. Wildman: Mr. Chairman, coming in late to the discussion, I am alarmed, not so much about the people that Mr. McGuigan was referring to, "those few," as he called them, who



ould wish to work past 65, but for those people who might indeed be pressured into working past 65 if this change were to be accepted. I understand what he was saying about people who perhaps have not developed other interests outside of their work who are faced, unfortunately, to be without other interests at the point of retirement.

Despite his comments about his experience with the 0-year-old gentleman with whom he worked as a youth, I think of miners, for instance, in my riding, some of whom might prefer to work past the age of 65. Very few--and I underline what he said about few--probably would want to work underground past the age of 65. But for those who do, I fear not only for their safety but the safety of their co-workers.

An individual may feel that he still has the ability and the strength to carry out that kind of work in that kind of an environment, which is dangerous enough for young men, especially with bonus workers, not to mention elderly men. I would really be concerned that if this committee were to accept this proposal, it would place not only the worker himself in jeopardy, but his co-workers in a situation where they might have to carry out work for the individual because he was unable to carry out the tasks no matter how much he might wish to do them himself.

Then there is the forest industry. We know the terrible health and safety record we have not only in our mines but also in our forest industry. A friend of mine died a few weeks ago in a chain-saw accident at the age of 32. I wonder whether we would be doing a service to a man of 60 or 65 by suggesting to him that he could make a few more bucks by continuing to work in the bush at that age, whether we would really be doing him a favour. I would wish that the members of this committee might think about that very seriously.

Mr. Stevenson: First of all, I do have considerable sympathy with the ideas that have been raised by the members of the Liberal Party, but some of the problems that are on the other side of the issue have been very clearly expressed by the members of the New Democratic Party. There are a couple of things that I wish to mention. First, I get more calls from people in the 60 to 65 group, asking me if there is not some assistance they could get prior to age 65, than I do from the over 65. I know Mr. Johnson is going to speak more about that later on.

There is an other issue that is particularly common in companies and municipalities, that of employees who reach the age of 65 and do not realize the ways in which age is catching up to them. Some of them are not willing to step down. The age of 65 limit allows companies and groups to get rid of these people in a relatively comfortable manner without hurting them.

Those individuals may have made a tremendous contribution to a company or municipality. To extend the retirement age and have the employers forced to move them to a less demanding position can be a very crushing thing for both the workers and the people with whom they have worked for so long. I question the extension of that age for that reason.



Large companies quite often can create positions or give a person a lateral promotion to get them out of a bit of pressure and still make them feel very much a part of the organization. But smaller groups quite often do not have that flexibility. I really feel we would be not only hurting the employers but in many cases the individuals as well.

In rural areas I am finding that people who retire at 65 and are forced to retire at 65, if they still have considerable competence, and many of them certainly do, as other members have said, are rehired in that same organization, or in other organizations, in temporary full-time positions or temporary part-time positions as the individual wishes, and they can continue, sometimes for years, to make a worthwhile contribution. That sort of thing seems to be working very well.

I am an employer too and, like Mr. McGuigan, I hire retired people whenever I can. The problem is that most of them in my area that still have the health and the desire to work are already working; they are damned near impossible to find. I would suggest that in my area that it is probably easier for a 65-year-old to get work than an 18-year-old in many cases.

I really question that extending the age of retirement is going to solve many problems for people. Possibly in big cities where they are not as well known and so on, it may be a greater problem than it is in rural areas. But I think the problem is solving itself in rural areas, and until some of the findings of the commission or board, or whatever it is that the minister mentioned, are known, I think we should leave the situation the way it is.

Mr. McGuigan: Mr. Chairman, can I respond to that?

Mr. Chairman: We still have three more speakers and we have spent a long time on this.

Mr. McGuigan: It pretty well addressed the situation that I pointed out. When these people retire and take this second job, they usually take a big reduction in wages.

Mr. Stokes: That is why you hire them.

Mr. McGuigan: Sure. I do not apologize for that. Our industry is a low-wage industry.

Mr. Stevenson: My father is a senior citizen. I hope he keeps going until he is 128.

Mr. Chairman: Let us please stick to the issue.

Mr. McGuigan: The point is that they are doing the work, whether they are working for their former employer or they are working for another one. So this argument about them taking work away from a younger person has no net effect. What is the difference whether they are working for their life-long employer or they drop back and work for me or Mr. McClellan or someone else? They might as well stay in their present jobs, where they are really comfortable and know the job, and work there as long as they like.

As far as the question of safety is concerned, surely that would be covered by their competency. I certainly would not suggest that I would want to work in a gang of miners where my life depended on someone who was close to 70 years old. I just would not feel comfortable about it. I do not think that they would be in that gang because of the question of whether or not they were competent.

Mr. Eakins: I just want to comment that I do not think it is completely valid, as the member for Algoma (Mr. Wildman) has stated, that there is danger in a person over 70 being in the work place.

Mr. Wildman: I did not say that was necessarily true, but that could be true.

Mr. Eakins: Yes, it could be true, but the government has already moved, as the minister knows, to rectify the situation in one particular area where a person had a health problem, such as a heart problem. You would automatically lost your licence if you were a truck driver. You could not drive because you were considered to be a menace on the road.

If you have had an operation, even a heart bypass, you now can have that licence restored and can go back with an A licence or the other licences that only some months ago you would lose. Those Highway Traffic Act amendments were brought in. They were valid and they were good and I think they are very sensible.

To say that a person at 70 might have a health problem, I do not think it could be any more dangerous than in one who is much younger because at least, if they have had the problem and have had it rectified, you know they are in much better shape than those whom you do not know have the problem.

Mr. J. M. Johnson: I have mixed emotions on this, the same as I have on most of this bill.

Mr. Eakins: Jack, you will be here forever.

Mr. J. M. Johnson: For example, I would like to take both sides of the issue on this one.

Mr. Wildman: Come on, you are not a Liberal. What are you trying to do here?

Mr. J. M. Johnson: I use the personal example of taking jobs away from young people. In my own business I have had the occasion to hire several young people who have never worked out. My opposition quit a couple of years ago and I hired him to work for me. He is about 78 or 80 and he is doing a heck of a good job.

It is not true to say that you don't take jobs away, you do. It is also not true to say that it isn't a good deal; it is a good deal. They are far better, as Ross has said. I agree with Sheila and I have to agree with Bud. We take jobs away from young people, and yet the chap was going batty, he wanted a job. So I am not sure; I cannot answer that.

I have two questions to ask the minister before I am through, in case I forget, Mr. Chairman. I would like to express one concern. The senior citizens have many advantages in society today. I think this would create a problem for the government: What do we do with senior citizens' apartments, for example? It is fine when there is a need and when they do not have the dollars to pay for apartments. But if people at 65, 66 or 67 are still working, is that same financial need still there?

The second thing is that many private enterprises, such as theatres, shows and places of this nature, provide admission at token fees--half price or less--and in many instances transportation is at half price. Would that same feeling prevail if these people were working?

In today's society when young people have such a terrible time meeting their needs, paying the cost of educating their children, raising their families, paying their taxes, mortgages, et cetera, and receive so very little assistance, can we turn around and provide the seniors with the advantages that they have in society? An example is tax relief. It is not a fair situation. It creates a problem. Nick Leluk introduced a private member's bill--I am sure it was Nick--and I supported it, to raise--

Mr. Wildman: Very liberal guy.

Mr. Eakins: And you supported it.

Mr. J. M. Johnson: I supported it. So I find it extremely difficult to vote against it today.

I am not going to vote to support this, Ms. Copps, for the simple reason that the minister has promised he will have a commission set up to investigate and study the problem. But I would like to put on record my concerns, along with those of members of your party and some of our members, that it is not a one-sided issue. It is extremely difficult to resolve.

Mr. McGuigan: You have covered both sides very well.

Mr. J. M. Johnson: I cannot agree with Ms. Copps about the ageing process. She mentions Reagan and the senators. I am not sure; maybe 65 would be better in a couple of those instances. Now John Lane is a different example; John could stay until he's 90.

Ms. Copps: You are just saying that because Trudeau is coming close to the age of 65.

Mr. J. M. Johnson: I have two questions. One, how would the change in legislation affect the support programs for seniors?

Ms. Copps: Section 14.

Hon. Mr. Elgie: Sheila is quite right. Section 14 in the reprinted bill, which we had to add in view of the amendments that we have passed, provides protection for preferential treatment that senior citizens receive in the private sector or in any government program. They had to be protected. You are quite right that, in the absence of that, they would have been in jeopardy.



Mr. J. M. Johnson: It would create a problem.

Hon. Mr. Elgie: That is why section 14, a proposed amendment, has been added to address those very issues.

Ms. Copps: There is no problem now under section 14.

Mr. J. M. Johnson: My last question to the minister is on the presentation made by the firemen and policemen. I believe they mentioned that they have a collective agreement in nine of their regions which includes retirement at 60. Would this legislation, which says 65, in any way jeopardize that collective agreement clause?

Hon. Mr. Elgie: It does not change what it is now. It is exactly the same now.

Mr. J. M. Johnson: Your amendment would not change it?

Ms. Copps: (Inaudible) at 60.

Hon. Mr. Elgie: I agree with you, but they were brought under the existing legislation which covered the 40 to 65, so it does not change it.

The same situation exists under this legislation that is proposed as exists today, that is, if a collective agreement or other hiring practice requires retirement at an earlier age, then an individual would have the right, as he does today in all jurisdictions of this country, to say, "I am being discriminated against," and would be subject to a reasonable and bona fide qualification, such as the Air Canada test, the pilot who claimed he was able to carry out his duties.

A board could either deal with the individual complaint or could deal with the complaints of all of those people who thought that at age 60 they should not be forced to retire. But that is so today.

Mr. Kerrio: I happen to think this is a very good amendment. We are talking about amendments to human rights. It seems to me it is being very discriminatory to decide by a person's age that he or she should leave the work place. The ageing process is one that is extremely different with each individual. I cannot believe that we could sit down and pick numbers out of the air to decide when someone should leave the work place.

There was a comment made by the NDP--and a good comment--that we have a very serious problem, which is that we do not have a reasonable pension plan in place. To suggest that we should be discriminating and force early retirement until we have the good pension plan in place seems to me to get the cart before the horse. I cannot believe that anyone here would not allow an individual to make the choice on his own.

There should be some latitude as it relates to some concerns in the work place, just as we do with licensing older people. They are obliged to take a test; they are obliged to prove that they

can perform that function. But I cannot believe we could sit here and debate discrimination for days on end and then decide, because someone picked 65 out of the air, we could take that age and force people to retire. We have one of the worst pension plans in the world as it relates to those people.

9:50 p.m.

When you bring other people into the argument, it does not make any sense at all. When you talk about policemen in this country, or firemen, or many of the people who are paid from the public purse who get reasonably good pensions, certainly they can retire, but we have some very proud people in this country who are 65 and able to work and who would rather carry on on their own. I am telling you if you do not support this amendment to the bill--in fact, it might even be that it should go to any age as long as people are able to function--I think you are then discriminating in the worst possible way.

Ms. Copps: In an effort to wrap up, I think Mr. Kerrio has really covered some of the areas I wanted to raise. The issues of economic necessity and pensions are being addressed by the select committee on pensions; they are issues that we certainly have to come to grips with, but certainly not reasons for discriminating against any segment of society.

I also think that the elements raised by Mr. Wildman with respect to safety in the work place were the same kind of arguments that were used years ago to keep women out of factories; the idea was that women could in some way endanger the lives of men. Unfortunately, it was that prevailing thought that kept women from having equal opportunities.

Mr. Wildman: Come on, (inaudible) suggestions I made that women can work underground now; that is a ridiculous argument.

Ms. Copps: The argument I am making is to say a particular element in society, simply by virtue of their age, is going to present a danger is the same kind of argument that used to be used that women, simply by virtue of their sex, used to create a danger.

You mentioned the issues of miners and bricklayers. As a matter of fact, in my riding I happen to know bricklayers and I know a longshoreman whom I represented last year at a Workmen's Compensation hearing who is 74 years of age and he works out on the docks and he is very happy. I think if you look at any kind of medical evidence, predominantly it would show that a lot of people who were in a forced retirement situation died within two years after their retirement age. So what you are saying is preserve 65 as a retirement age so the person who is forced to retire can then have a much greater chance of dying. The pension is certainly not going to do them much good at that time.

I think it is a paternalistic attitude to make a blanket rule for every person when we know that there are going to be some individuals who will want to take advantage of an ability to work longer in society. There is certainly legislative precedent. We



ow that at present in the United States in the federal civil service there is no upper age limit, and they have also instituted as the upper limit in general. So we know there is precedent for allowing good employee-management relations to determine when a person is going to retire. I think the decision should be left with the employee, bearing in mind that he or she is competent to carry on the job.

Mr. Wildman, you said yourself that unfortunately a friend of yours was killed at the age of 32 in a chain-saw incident some weeks ago. My uncle was 17 when he was killed in a mine cave-in. The fact that he was 17 had no bearing on the mine cave-in when he was killed. Simply because a person is 65 and over, to say he is ready for the retirement heap is unfair, particularly when we ourselves are in a position of being able to carry on in our own jobs for as long as we so desire. There is a double standard that applies here.

I would say that even in the very limited experience I have had as Labour critic, I spent some time this summer visiting with some people who represent different labour unions and for the most part are aficionados of the New Democratic Party, who told me that although at present their labour organizations favour compulsory retirement at the age of 65, the overwhelming response of those individuals in the upper levels of the union is that they did not support personally compulsory retirement.

I think you are going to find that within the labour movement itself the idea of compulsory retirement at the age of 65 is changing very drastically and very radically, and I believe if you choose not to support this amendment tonight, probably within the next couple of years you are going to see a complete turnaround in the labour market in that the overwhelming number of people will be supporting an extension of the retirement age.

Mr. Wildman: Mr. Chairman, on a point of privilege, I never did suggest that because an individual might be 65 he or she was necessarily dangerous and might be dangerous to themselves or to their co-workers. What I did suggest is that you run into a very serious problem in determining competency, especially in dangerous occupations, such as some of the ones that Mr. McGuigan mentioned, in underground mining or in bush work. You have the question of who determines competency at any age.

There is a problem; I understand that. But the question really is not whether or not 65 or 70 is a better age, but whether or not we should be protecting workers by saying that there is an upper limit at which we should be ensuring that people, in dangerous occupations at least, are not--

Mr. Kerrio: Maybe they shouldn't start until they are 25.

Mr. Wildman: Maybe we should have a situation where underground mining is a trade. Maybe we should have licences. But I want to point out that the arguments raised by the Liberal members about licences and so on are completely irrelevant when you are dealing with underground mining.



Ms. Copps: On the same point of privilege, can I say that there are benchmarks in the United States which are set to measure competency. I think that a person who has been involved in any kind of business, whether it be underground mining construction trade or whatever, learns and develops their trade by recognizing competence and recognizing incompetence. If they do not recognize that, they are not going to survive very long in the business.

Mr. Wildman: That is exactly the point.

Mr. Chairman: Good. Now we have agreement on that. All those in favour of the amendment that moves the age to less than 70 years?

Mr. J. M. Johnson: A couple people voted who had no right to do so.

Mr. Chairman: The chair treats that as waving at other people in the audience, and that is fine.

Motion negatived.

Section 9(a), as amended, agreed to.

Mr. Chairman: Is there any difficulty with 9(b)? Shall it carry?

Mr. Stokes: Could I ask a question of the minister on b(i) which interprets the section of the act dealing with physical defects, including diabetes and epilepsy. Can you tell me now either in advance or after the fact, where these have particular application?

You and I had some correspondence and you said that you were going to address yourself to those specific problems. We had major employers who were denying employment to mill workers where it was quite obvious, even by the doctor's standards, that they were quite capable of doing the work for which they were hired, and it said so on the medical report, only to have some personnel officer say, "Notwithstanding what the doctor says, we do not want to inherit anybody who may, sometime in the future and for any number of reasons, become a problem." With the inclusion of these in the interpretation section, will that cover those problems I brought to your attention?

10 p.m.

Hon. Mr. Elgie: Yes, it will. A representative of the Ontario Medical Association at a recent conference on employment of the handicapped spoke about the issue of epilepsy, as I think you and I have. The fact is that 75 per cent of people with epileptic seizures are controlled by medication and are much more careful in their lifestyle than others might be in order to ensure that those situations do not arise which might predispose them to seizures.

Mr. Stokes: As is the case also with diabetes.

Hon. Mr. Elgie: Yes, it is the same thing with diabetes. A well-controlled diabetic, from my perspective as a physician, is someone in whom I would place as much confidence, indeed probably more so in some situations, because I know there would be no likelihood of his being out late the night before and doing a variety of things that other people--not you and I--might do on late nights, which might leave them a little incapacitated the next day.

Mr. Stokes: You can speak for me on most things but certainly not that.

Hon. Mr. Elgie: What we are really saying here is that if you have epilepsy and it is well controlled, then you should not have to go to subterfuge in order to obtain a job. Frankly, that is what the doctor said at that convention; that it troubled him to have to tell his patients they should lie on application forms, but he felt confident enough about their ability that he did not want them deprived of a job, particularly when they had a driver's licence.

The government says that if you have not had a seizure for two years--it is three years in the United Kingdom--and if a physician says that you are controlled, then you can get a driver's licence. The number of seizure-free years may vary but that is not the issue. The issue is whether there is some degree of certainty that you are not going to have a seizure. Something could happen to any of us today while we are driving a car. At least that person is known to be controlled. He knows his problem and lives accordingly. I consider him to be safe.

The issue is whether he can do the job. There may be certain situations, in high-rise buildings, for instance, where even slight risks of a seizure may put him and others at risk; one might have to think about that. But surely that is a decision that should be made by physicians and people who can evaluate the control that a person has.

To be quite frank, specific things like diabetes and epilepsy are mentioned because of the debate which occurred. There were people in the Liberal Party--I think it was Bernie Newman particularly who wanted diabetes included--there were some in your party that wanted epilepsy included and there were some in our party that wanted both included, just to be sure they were covered.

As a physician I can tell you that the term "physical disability, infirmity" and so forth would have covered them all, but some people wanted to have certainty about that. That is why they are specified. It was for no other reason than that.

Section 9(b) agreed to.

On section 9(c):

Ms. Copps: I have an amendment to subsection c.

Mr. Chairman: Ms. Copps moves the deletion of the words "or preference" at the end of that subsection.

Ms. Copps: The reason for the motion is that our lawyers say the inclusion of "or preference" at that point is confusing, to say the least, in defining discrimination.

Secondly, there is the issue of preference, which Mr. Johnson was addressing earlier on, with respect to things like senior citizens' apartments being adequately covered under section 14. We suggest that the deletion of "or preference" would simply make the definition of discrimination to be "differentiation resulting in exclusion or qualification." The issue of preferential treatment, where you would be dealing with the situation like senior citizens' apartments, would be covered under section 14.

Hon. Mr. Elgie: I do not really understand the argument. Surely we all understand that there can be discrimination by preference. That is what the height and weight restrictions, sex restrictions and so forth are all about, for example, giving preference to those that are over six foot two or 180 pounds. I just do not understand how you think we could deal with those problems that are discriminatory if you do not have the word "preference" in. I really do not. I do not mean that in any critical or cynical way.

Ms. Copps: So you are not allowing discrimination on the basis of preference?

Hon. Mr. Elgie: That means if you have height and weight requirements, you have to justify them.

Ms. Copps: But not according to the way you have the legislation. You are determining discrimination to be not allowed and therefore there is no preference.

Hon. Mr. Elgie: No, discrimination means by qualification or preference.

Ms. Copps: If you go back to part I, section 1, "without discrimination because of" these categories.

Hon. Mr. Elgie: "Equal treatment with respect to to...without discrimination"

Ms. Copps: "Exclusion, qualification or preference" on the basis of race, religion, ancestry, et cetera.

Hon. Mr. Elgie: Let's read selectively. "Every person has a right to equal treatment...without discrimination." We could say "without setting preferences that discriminate" against you on the basis that you are Chinese, for example, and therefore you are short.

Ms. Copps: We feel there are situations where you do have preference. You have suggested, for example, in section 14, that where there is preference on the basis of economic necessity, that is an allowable discrimination.



Hon. Mr. Elgie: That's right.

Ms. Copps: We feel that the inclusion of the word "preference"--and I am extrapolating from the opinion I got from our lawyers--could create legal problems in its interpretation, once you actually went into the application of the code.

Hon. Mr. Elgie: I would think you would have a real problem if you do not have the word "preference" there. For instance, that is what constructive discrimination is all about. It is all about having a beard and so on.

Ms. Copps: But, you see, constructive discrimination is not allowed the way that you read subsection c. It is not allowed there--yet it is allowed under section 14--because you are saying no preference under section 1.

Hon. Mr. Elgie: What we are saying under section 14 is that it is deemed under this section to be an exemption.

Ms. Copps: Under section 1 you are saying that there is no preference, no exclusion, no qualification--no preference, no discrimination. You are defining "preference" in the negative. Under section 14 you are stating there is no preference, and yet under certain circumstances there is a preference.

Hon. Mr. Elgie: Section 1 lays down the basic fundamentals of the bill and then section 9, some definitions. Much of the rest of the bill is either the powers of the commission, the powers of the board and certain exemptions from sections 1 to 8. Section 14 is an exemption.

But the overall principle of the definition of discrimination would be, in my view--I am always subject to changing it--badly impaired if you took out the word, "preference." Counsel, what is your view?

Interjection: Why is that in there, Mr. Stone?

Mr. Hess: For positive preference: "As an employer I would prefer to have all-white employees; I would prefer to have all of a certain race or religion."

Mr. Eaton: "I don't want to exclude you, but I prefer--"

Mr. Hess: If I can prefer a group, I can exclude anybody who does not belong to the group. I cannot understand the motion.

Ms. Copps: You do not understand the motion? The minister is giving me the message that you would like to leave some room for concrete or positive discrimination.

Hon. Mr. Elgie: Oh, no, just the reverse. We are saying that under exemption sections we do allow certain--

Mr. Wildman: How does this affect affirmative action?

Hon. Mr. Elgie: That is under section 13 where they have the power to approve of it.

Ms. Copps: Our legal interpretation was that the word "preference" certainly is as subjective as it is an objective legal assessment, and for that reason we would suggest that it be deleted. I am not even sure that we can further determine the definition of "preference" because what is preference to you may be nonpreference to me.

Mr. Stokes: That's why you wanted to eliminate it.

Ms. Copps: That would leave the definition of discrimination simply as "exclusion or qualification."

Mr. Wildman: Mr. Chairman, can we ask committee counsel for an interpretation of what preference means?

Mr. Stone: Preference would cover the situation under section 1 where a restaurant said, "We serve whites only." They have not put down anybody; they just said, "We only serve whites because that is a preference, that is a condition that we give preference to." I do not see that there needs to be anything subjective about it.

The inclusion of it in the definition results in its being the general rule. The general rule is that you cannot be selective in giving preferential treatment. After the general rule is established, it is subject to exceptions with limits which are delineated subsequently in the bill.

Ms. Copps: Would you not agree that the preferential situation that you just outlined would be covered by exclusion? We feel that "preference" is too subjective and could be subject to a number of different interpretations. The more you limit the wording, the more chances you have that it is going to be held up in a court of law.

10:10 p.m.

Mr. Stone: I guess it is abundance of caution because the purpose of the definitions is to settle the kinds of questions people ask. It may be excessive, but it is the kind of thing that people bring up.

Ms. Copps: The concern that we have is that with the inclusion of preference specifically spelled out in section 1 in part I, a court of law may rule fact that part I takes precedence over part XIV--I guess that part is in the old act, and I am not sure what it is in the new one under the revisions.

Hon. Mr. Elgie: The exclusion of the affirmative action.

Ms. Copps: Exclusion based on economic preference. We think that it creates confusion that could possibly be interpreted differently in a court of law to the way that we are interpreting it here. We thought that in an effort to eliminate the confusion of the rather subjective wording "preferential," that "exclusion" and the second word would cover most--I cannot think of any instance where the situation would not be covered under the first two descriptive--

Ms. Copps: But it would be covered under "exclusion" because you are excluding every other group.

Mr. Eaton: You would not necessarily exclude them though. You could say, "I prefer to serve whites first," and you could let somebody stand in line for an hour. Then you would serve them.

Ms. Copps: Qualification.

Mr. Eaton: No, that is not. It is preference.

Hon. Mr. Elgie: There are two sides, one saying, "We don't serve blacks," and other saying, "Whites only." One is an exclusion and one is a preference.

Ms. Copps: We just feel that it may cause some interpretative problems. I am sure people will be taking it to court after it goes into effect, and we think that preference is rather a subjective word than an objective one.

Mr. Wildman: Mr. Chairman, the other question is if you exclude whatever group--Mexicans or Chicanos--and you are saying, "You can't do that," and then you have someone else who prefers someone who is six foot, six, and since very few Mexicans are six-foot-six, then if you do not deal with the preference problem, you are leaving an opening for the group that says, "Okay, we are not excluding, we are just preferring." You have got to deal with both sides.

Ms. Copps: Our concern, and I shall just reiterate it one last time, is that the issue of preference may be interpreted in a different way to eliminate the kind of sanctions that (inaudible) in other sections of the act, which would in fact allow a preference under certain circumstances; that is why we would prefer to see the wording deleted. But it is a fairly legalized one, and I am sorry that our lawyer is not here to comment on it.

Mr. Chairman: Any further discussion?

Mr. McClellan: Mr. Chairman, I do not understand the objection to "preference." I am from Toronto and I grew up here, and it is not that long ago that you pretty well had to be a member of the Orange Lodge to get a job in certain sectors. That is an example of discrimination by preference.

Ms. Copps: Or by qualification.

Mr. McClellan: No, I do not think so.

Ms. Copps: The qualification being you are a member of the Orange Lodge. You can interpret it either way. I think that would be covered, though, in the qualification.

Mr. Chairman: Are you ready for the question on the amendment? No? Mr. Stone.



Mr. Stone: Mr. Chairman, maybe in the interval before the next meeting Mr. Hess and I could take a closer look at that, just to see whether there would be anything in that. I would like to look at that again. If there is, of course, it should be fixed.

Mr. J. M. Johnson: Mr. Chairman, could 9(c) be stood down until that is clarified?

Mr. Chairman: Now that Mr. Stone has spoken on it, yes.

Is there any objection to setting 9(c) down? The concern, as I understand it, is that it affects other exemptions that allow "preferential." Is that right?

Ms. Copps: Yes.

Mr. Chairman: You are happy if there are another 10 words there that would extend the protection as long as they do not affect the other section? Okay.

We shall stand 9(c) down then until the next meeting.

On section 9(e):

Mr. Chairman: I understand Mr. Pollock wants to speak on this.

Mr. Pollock moves that the relettered clause (e) of section 9 of the bill be struck out and the following substituted therefor: "(e) 'family status' means the status of being in a parent and child relationship."

Interjections.

Mr. Chairman: Mr. Pollock, further moves that clause (d) of section 9 of the bill be struck out and that clauses (e) and (f) be relettered as clause (d) and (e). Any discussion on that?

Ms. Copps: You are moving (d) forward and coming up with another definition further on, I think, are you not?

Hon. Mr. Elgie: We are redefining family status.

Ms. Copps: But the word disseminate?

Hon. Mr. Elgie: That is gone; (d) has gone, so we move the present (e) up to (d) and (f) up to (e) and then there is a redefining of the words "family status."

Mr. Stokes: Could you read the new (d) again then please?

Hon. Mr. Elgie: Clause (d) is coming out. Section 12 was rewritten. The word does not appear in the bill any more. It is a defining of the word "disseminate," which no longer appears in the bill. It was submerged.

Ms. Copps: I think that was probably in response to one of the people who came before the committee and asked that it all be written in layman's language.

Mr. Chairman: Shall the amendment carry? Clause (d) is struck out and the rest of it is a renumbering.

Hon. Mr. Elgie: You see there was the decision made not to go with the reprinted bill.

Mr. McClellan: I just want to find out which one in the reprinted bill we are passing, the new (d)?

Mr. Chairman: We are passing "equal." We are not passing anything actually in the renumbered bill because it does not appear in there.

Shall that carry?

Motion agreed to.

Mr. Chairman: Mr. Pollock moves that the relettered clause (e) of section 9 of the bill be struck out and the following substituted therefor: "'family status' means the status of being in a parent and a child relationship."

Shall that carry?

Mr. McClellan: I just want to ask one question. I assume that that covers guardianship situations, or does it? Usually in child welfare legislation, it seems to me it is spelled out thoroughly to cover all the permutations and convolutions, but I do not have the material here. That is what is intended at any rate.

Motion agreed to.

Mr. Chairman: Mr. Eaton moves that section 9 of the bill be amended by adding thereto the following as clause (f): "'group insurance' means insurance whereby the lives or wellbeing of the lives and wellbeing of a number of persons are insured severally under a single contract between an insurer and an association or a person other than an employer."

Hon. Mr. Elgie: I would have to ask Mr. Hess to explain that. It came about because of the change in the definition of age.

Mr. Hess: It only comes up in one section. If one looks at Bill 7, that is, before its revision, as it was originally printed, section 20 deals with insurance contracts, and we were dealing with individual insurance contracts. It said down around about the third line from the bottom, "offered or issued to a specified person." That is section 20 of Bill 7 as it was originally on second reading.

It was pointed out by the insurance people at the Ministry of Consumer and Commercial Relations that there are insurance policies which are not employer group insurance policies, but are issued to what you might call groups. These type of policies can be described as, for example, key man insurance policies. A company takes out insurance on key men in the business.

10:20 p.m.

There are policies issued to families as a group--father, mother and children. There are policies issued by associations to their members; they are not employer-employee relations at all. For example, it could be a professional association; it could be a trade association that has these types of policies. It was pointed out to us that we had omitted covering those policies.

Therefore, the reason for the definition is to define those types of policies. We then later on amend section 20 of Bill 7, as it was originally, by adding "group insurance" and taking out the words "offered or issued to a specified person." In those types of policies I have just mentioned, there cannot be discrimination on the grounds of age, sex, marital status, family status or handicap, unless the insurer shows that there is a reasonable and bona fide ground for either excluding them or rating them or whatever. That is the purpose of this.

Ms. Copps: My concern would be, and it may be covered later on, that in the definition as you have it here you have specifically excluded people who are under the employed person provision, although they may be involved in a group insurance plan. Are they covered again under 20?

Mr. Hess: Yes, they are. They are covered in a separate section.

Ms. Copps: They are covered under section 21 of the new bill?

Mr. Hess: Well, 21 is the successor to section 20 of the old bill.

Ms. Copps: Right, I understand that, but under section 21?

Mr. Hess: Section 24 is the one, I think. You are thinking of employer-group policies? It is now 24 of the revised bill.

Ms. Copps: But that is a question of conditional employment based on a group policy.

Mr. Hess: Section 24 deals with the employer.

Ms. Copps: Right. But it is allowing an infringement based on (inaudible) differentiation in 24(1), is it not?: It says, "is infringed...term or condition of employment."

Mr. Hess: No, it says, "is infringed where employment is denied." In other words, an employer says, "I cannot hire you because you have a handicap and I cannot get you into my group insurance policy." That is no reason for not hiring that person. That is the start of it, and then we go on.



Ms. Copps: I understand that, but in your definition of group insurance, you do not have a separate definition for an employee insurance plan? Do you consider that that is self-explanatory?

Mr. Hess: We did not think it was necessary.

Ms. Copps: You do not consider that some person may choose to interpret group insurance as now excluding employees as result of the change?

Mr. Hess: Well, it would because the definition says that it does not include insurance issued as group employer insurance.

Ms. Copps: I understand what you are saying. Under section 24 you feel that it is already covered under 24(1), so therefore you are not repeating it. But I wonder why, in the interest of being doubly certain that there will be no circumvention of the act by potentially a group coming and saying, "Under this definition they are saying group insurance is such and such."

Mr. Stokes: You objected to that in the previous section, making doubly sure.

Ms. Copps: No, that was different.

Mr. Hess: May I paraphrase you? I think what you are trying to say is why in the hell do we not have a definition of employer-group insurance?

Ms. Copps: Right.

Mr. Hess: So it would read, "'Employer group insurance' means insurance whereby the lives or wellbeing or the lives and wellbeing of a number of persons are insured severally under a single contract between an insurer and an employer." I do not know that it is really necessary.

Ms. Copps: The only reason I ask that is that if you are going through on first reading, look at group insurance and then go back to the issue of employer insurance, it isn't always spelled out where the difference between group insurance and employer insurance is, and I am just wondering if that is going to create a problem.

Hon. Mr. Elgie: We will think about that overnight.

Ms. Copps: I do not mean to be nit-picking but I know that (inaudible).

Hon. Mr. Elgie: I don't think it is a bone of contention; you just want to make sure.

Ms. Copps: I just want to make sure.

Mr. Hess: We speak about employee plans when we get to section 24, not employer plans. It is employee plans, so it is a little different in language.

Ms. Copps: I think some unscrupulous employers may see the definition of group insurance as excluding employees. Therefore, do you want to deal with that bone of contention at some future date or---

Mr. Chairman: We will adjourn now until eight o'clock next Thursday.

The committee adjourned at 10:26 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

BILL 7, HUMAN RIGHTS CODE

THURSDAY, NOVEMBER 12, 1981





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VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
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Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Brandt, A. (Sarnia PC) for Mr. Harris  
McClellan, R. (Bellwoods NDP) for Mr. Stokes  
Miller, G. I. (Haldimand- Norfolk L) for Mr Eakins  
Renwick , J. A. (Riverdale NDP) for Mr. Laughren

Clerk: Richardson, A.

Consultant: Stone, A. R., Legislative Counsel

Researcher: Berry, C.

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister  
Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon R., Minister  
Hess, P, Director, Legal Branch

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, November 12, 1981

The committee met at 8:12 p.m. in room No. 228.

HUMAN RIGHTS CODE  
(continued)

Resuming the adjourned consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

The Vice-Chairman: I guess we will start.

Mr. Riddell: Before we start, Mr. Chairman, I would like to speak on a point of privilege. I made some comments the last time we met on an amendment pertaining to the inclusion of sexual orientation and it led to an article which appeared in the Globe and Mail entitled "The Offensive Line." As a result of that article, I received a letter which I think would be appropriate to read into the record since I am sure we have all participated in some way in Remembrance Day. This letter was written by a veteran who is a war amputee and whose father died at a very early age because of a disability.

Before I read the letter I want to say that in my opinion the Globe editor was certainly reaching and completely misleading when he suggested that my comments referred to other prohibited grounds for discrimination, and he indicated colour in that article. What really offends me is that the person who wrote that article wasn't even sitting in this room. I am not too sure there was a reporter from the Globe and Mail in the room at the time. Certainly the editor received this information secondhand. I call this irresponsible reporting. I hope my comments will get back to the Globe and Mail if they are going to insist on this type of thing.

We were dealing with sexual orientation. My comments pertained to the amendment, which endeavoured to include sexual orientation in the bill. I certainly did not make any reference to colour or anything else. I think this letter will be interesting to the committee and it was written by a veteran. He wrote to the unknown--

8:10 p.m.

Mr. Renwick: I hope Mr. Riddell will forgive me for intruding. I think I have seen the letter and if I remember correctly the letter contains a statement to the effect that he doesn't want it to be published.

Mr. Riddell: I checked this out and since he didn't sign the letter, I fail to see how he could be identified. If Mr. Renwick thinks I am treading on dangerous ground, then I won't read it.

Mr. Renwick: I wasn't concerned about that, but I

remember when I saw the letter I didn't recognize that it wasn't signed. I don't know whether that makes any difference or not, but I think there is a specific statement in there that he does not wish the letter to be published.

Mr. Riddell: Yes. It states, "This letter is not for print or publication. I am not afraid of facing a foe I can see but I do not want to see my home or my children's homes or car incinerated because I alluded to a family of"--

Mr. Renwick: My problem is when I read the letter thought that a person might be subject to being identified because of the nature of it. I leave it to you, and to the discretion of the committee.

The Vice-Chairman: Maybe you would wish to paraphrase it rather than read it.

Mr. Riddell: All right. I will dispense with anything that may identify him. He is talking about the 108,595 who died in two world wars and he says, "they would wonder why they left Canada to protect an ideal that a man's home was his castle and that he had freedom of choice in some things."

"In our city there is a family that would make the Black Donnellys look like a Sunday school class. They have been implicated in two known murders, dozens of assaults, and identified as carrying cans of gasoline in the moonlight towards a dance pavilion from which one had been evicted a couple of nights earlier by the police. It burned to the ground.

"The park superintendent hired a family member and refused to keep his job open for him when he was caught red-handed in a theft and was sent to prison for a few months. In quick succession his barn was firebombed and his car was reduced to a burned hunk of junk. He then had his speedboat motor and the city truck that he drove incinerated at his residence.

"Would anybody in their right mind, if they could wheedle out of it"--this is the terminology he is using--"want to accept people like that as tenants under their own roof? Would Mr. Laughren or the unknown editor?" He wrote this to the editor; we don't know who the editor is because they don't have to sign their names.

He started out his letter by saying, "I have read 'The Offensive Line' and if Mr. Riddell's choice of words made Floyd Laughren and the unknown editor shake their heads, then we are living in an age of idiocy."

Mr. McClellan: You have got a point there.

Mr. Riddell: "Would the parents who have raised their children to believe in the sanctity of marriage, and because of high mortgage rates are forced to rent out part of their homes, want to bring in a shackee and a shacker to live common law, tenants who might change bedmates one or two times during the course of a year?"



I am not going to read the next paragraph because that is the part which might identify him. He goes on to talk about his disabilities and things of this nature: "I would not want a totalitarian government telling me that I could not select or qualify an applicant who wished to rent a house I might own. Tell us where it differs from being in Russia. Am I a bigot? This letter is not for print or publication." I read that.

"Before you condemn Riddell's way of thinking, remember, it is always easier to place the other guy's property at risk than your own." He ends by saying, "Put up or shut up." The point I am trying to make is that I don't think I was completely out in left field when I raised the comment I did.

The Vice-Chairman: You had better say right field.

Mr. Riddell: This isn't the only letter I received after that article "The Offensive Line" appeared. I have been receiving telephone calls from across the province. I just thought I would indicate that I am not alone. The article was misleading when it suggested that I was prepared to discriminate on other grounds such as colour. We were dealing with sexual orientation. Thank you, Mr. Chairman.

On section 9:

The Vice-Chairman: Are there any other comments before we get under way? I believe we were on section 9(f), dealing with an amendment moved by Mr. Eaton to do with definition of group insurance and so on.

Mr. Renwick: Have we passed item (c)?

Hon. Mr. Elgie: I think we stood (c) down.

The Vice-Chairman: Oh yes, we were going to get some additional--

Hon. Mr. Elgie: We finished (d) but (c) was stood down because of Ms. Copps's concern about the word "preference."

The Vice-Chairman: We haven't carried (f). Should we finish that before we go back to (c) or move on? What is the wish of the committee? Let's get rid of (f) first.

Mr. J. M. Johnson: I think (f) was fairly well accepted.

Ms. Copps: I have some questions about the exclusion of an employer from the definition of group insurance. We were going to get some comment on that.

Hon. Mr. Elgie: Mr. Hess, did you have a chance to review that issue or do you want that stood down for further consideration?

Mr. Hess: I reviewed it and I still stand by my guns, I guess is the language I should use, that it is not necessary. I explained last day this committee met that group insurance was introduced to cover those situations where there were policies

apart from individual policies. I pointed out that it referred to section 21 of the revised bill, and did not refer to policies that were issued to particular individuals but to policies such as those issued to members of associations, doctors, lawyers, accountants or members of other professions, salesmen, people of that nature, and also perhaps to Ontario Motor League Association members, union members, to a family as distinct from just the individual member of a family or to cover what they call key personnel insurance.

Ms. Copps's objection was that by reason of the wording it seemed to indicate that employer group insurance was not covered by this act. I cannot accept that because section 1, section 3 and section 4, in my submission, all would apply to those types of policies. Therefore it is not necessary to define something that does not need to be defined.

One can also point out to Ms. Copps that there is more to this than just employer insurance, because that connotes the fact that insurance companies provided the coverage. In many instances employers are what I would call self-insurers of certain plans such as sick leave, pregnancy leave, things of that nature. So we would have to extend the definition much beyond what I think she has proposed. In my submission it is not necessary.

Ms. Copps: I have not proposed anything. I asked why the exception was made for an employer. Why did--

Mr. Hess: I explained that. Perhaps you weren't listening to me.

Ms. Copps: I was listening very carefully. In fact, the question I asked the last time out was that I had some concerns that the exception being made of an employer would allow room for litigation in the future. What we are trying to do is create a bill that is as airtight as possible. I have some question as to why "other than an employer" is included in your definition of group insurance. Could not the group insurance definition be simply and amply covered by saying, "means insurance whereby the lives or wellbeing or the lives and wellbeing of a number of persons are insured severally under a single contract between an insurer and an association or a person." That would cover employer and other than employer. I don't understand why you have accepted the employer--

8:20 p.m.

Mr. Hess: Because employer group insurance is specifically provided for in section 24--

Ms. Copps: Section 24(1) and section 24(2).

Mr. Hess: It is subsection 2 in particular. Handicap is specially dealt with in subsection 3. Age, sex, marital status or family status are especially dealt with in subsection 2. What more can I--we are not trying to provide any "out" any more than what those sections say. Will you concede to me that section 1, section 3 and section 4 apply to employer insurance? Would you concede me that?

Ms. Copps: Yes, I concede you that.

Mr. Hess: Then what we are dealing with are exceptions, are we not? We are now dealing with exceptions to that--

Ms. Copps: I am here to try to resolve the problem. If you would just relax and get a grip on yourself. I am not here to attack anyone, any individual person.

Mr. Hess: I am relaxed.

Ms. Copps: I will concede that section 1, section 2 and section 3 cover employment. I conceded that last week.

Mr. Hess: All right.

Ms. Copps: My question is--and maybe there is a reason for it, perhaps because the company is under section 25 or being potentially excluded from this section 24(3)(b). I do not know.

Mr. Hess: Section 25; I am sorry I don't know that.

Ms. Copps: Section 24(3)(b).

Mr. Hess: Yes, there is an exception there, Ms. Copps.

Ms. Copps: Is that why "other than an employer" is listed in section 9(f)?

Mr. Hess: Yes. The definition only applies to section 21, Ms. Copps.

Ms. Copps: I am wondering why you have specifically excluded "employer" and I concede the reason you have excluded it is because you would like to see exceptions made for employers in certain cases of disability.

Mr. Hess: Quite so.

Ms. Copps: That would have been very easy to answer last week, if that is what you are getting at.

Mr. Hess: I thought I did answer that last week, but I was willing to try to answer it again.

Hon. Mr. Elgie: If you still have any doubts, Ms. Copps, I am quite prepared to have it reviewed again because we are not trying to have anything put in that is intended or would in reality create any loopholes. If you are not satisfied, I am quite prepared to set it aside and have some independent thing on it.

Ms. Copps: I understand now the rationale behind putting the "other than an employer" in that definition. It may be possible for us to--

Mr. Hess: May I explain that section 21 provides an exception on the basis of reasonable and bona fide grounds. But the Employment Standards Act dealing with employer group insurance is a



little different than that. It only permits it on, for example and this is one example, an actuarial basis in differentiating between, say, male and female insurance. That is one example.

Ms. Copps: Would that actuarial bias apply in cases of disability and would there be a notion of bona fide grounds built into the section?

Mr. Hess: Disability? You mean disability insurance?

Ms. Copps: No. Someone with a disability.

Mr. Hess: You mean a handicap, which is the language we use here.

Ms. Copps: Excuse me, I am sorry if I am not using your language. I am using the language of the people, which is what I am elected to do.

Mr. Hess: That was unnecessary, but go on, please.

Hon. Mr. Elgie: Ms. Copps, would you like this set aside?

Ms. Copps: I would like it set aside.

Mr. McClellan: I just had a concern that I wanted at least to give notice of. When we come to section 21, I have a concern that it represents, if you will, an omnibus loophole for the insurance industry, subject to whatever bona fide means.

I suspect bona fide means whatever the insurance company says it means, which is to say when an insurance company writes up its policy for auto insurance, life insurance or whatever kind of insurance it is, they will build in distinctions between different classes of people, men and women, people who have handicaps and people who do not have handicaps.

But there is nothing in the statute that requires there to be an objective measurement of risk. At least there is nothing in the statute as I read it that requires that the insurance industry be legally bound to prove there is a risk differential before they build differences into their rate structure or into the availability of the insurance in the first place.

Again, I am at the disadvantage of coming in at the eleventh hour and I do not know all the discussion that has taken place. But I would imagine this is something that has not been considered carefully. I would ask the ministry to look at that again. I think it is an extremely important point and a major omission in the drafting of the bill. Before we come to section 21, perhaps that could be studied some more. Otherwise, I would tend to move an amendment that requires that risk be taken into account in measuring whether or not an extension is bona fide.

The Vice-Chairman: Okay, I think we can deal with that when we get there. We are standing section 9(f) down. Let us go back and do clause (c). We asked for clarification, I believe, or--

Hon. Mr. Elgie: The issue was the issue of preference. Arthur, were you prepared to say a few words about that?

Mr. Stone: At the last meeting, Ms. Copps had made the point she thought there was a chance on outside advice that the inclusion of preference clashed with the affirmative action sections in the bill. I wondered from the word and whether it seemed to me there might be anything in that. Having looked at it, I really cannot see how it would interfere with the application of affirmative action.

I think, as I said last time, the inclusion of preference in clause (c) in effect rules out initially in general terms, private affirmative action. Then, in so far as the act is later on specific about making an exception to affirmative action programs, that those provisions would apply, those exceptions would apply, only in so far as they extend. I think that is probably an accurate description of what the bill does as written.

Ms. Copps: On the basis of that response, I refer the members back to--and actually I should have had copies made because it would have been easier to follow through--a discussion paper that was prepared by the legislative research body discussing the issue of the definition of discrimination. I do not know whether any of you have a copy of that.

In the discussion paper it is stated: "The current code provides no definition for this term"--the term "discrimination". "It has been pointed out that this fact raises the question of whether the word refers to adverse treatment or to simply different treatment. John Laskin," whom we heard from, "counsel to the commission, reasons that, 'Since the object of the legislation is to remedy the affront to human dignity, it would seem...that discrimination in the context of human rights legislation means treating people differently as a result of which the victim suffers adverse consequences or a serious affront to dignity. To hold otherwise would bring many inconsequential and socially harmless practices into conflict with the code.' He refers to the 1968 English Race Relations Act, which defines discrimination...as follows:

8:30 p.m.

"'For the purposes of this act, a person discriminates against another if, on the grounds of colour, race or ethnic or national origins, he treats that other...less favourably than he treats or would treat other persons.'

"Bill 7, however"--and, I repeat, this is the Legislative Assembly's discussion paper--"defines the word as follows: "Discrimination" means differentiation resulting in an exclusion, qualification or preference.'

"It would seem that the perspective adopted by Laskin and the English act is not the perspective of Bill 7 because of the inclusion of the word 'preference.'

"Although 'discrimination' appears frequently in human rights legislation, the word is not usually defined. The Canadian Charter of Rights and Freedoms does not define it; nor does the federal

Human Rights Act. The Quebec Charter of Human Rights and Freedoms is the only one that actually defines it and they use it in the following way:

"Every person has the right to full and equal recognition in exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, sexual orientation, civil status, religion, ethnic, political convictions," et cetera.

"Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."

"The word is also used in the Canadian Bill of Rights,"--that is, "discrimination,"--"but is also undefined there. The Supreme Court, when dealing with cases like Drybones and Lavell, seems to have assumed that the meaning was clear. The Alberta Court of Appeal, in contrast, has directly addressed the issue in the 1977 case of Regina versus MacKay; Regina versus Willington. The court was asked to decide whether Alberta had contravened section one of the Bill of Rights by providing...that 'child' means a girl under 18 and a boy under 16--that is, whether it had discriminated against boys. The court stated that:

"Examining the Canadian Bill of Rights, it is my opinion that in using the word 'discrimination,' it was used in the sense as 'to discriminate against; to make an adverse distinction with regard to, to distinguish unfavourably from others,' which is one of the definitions in the English dictionary..."

"It went on to decide that the definition of 'child' was intended, in fact, to confer a benefit, which benefit was being conferred on girls. Furthermore, boys covered by the definition were not being unfavourably distinguished from other 16-year-old boys.

"The inclusion of the word 'preference'...may serve to challenge this way of thinking about discrimination, since it may now be possible to argue (as, apparently, it was not in Regina versus MacKay, above) that the very fact that one person gets something...that another does not leads of necessity to the conclusion that the other has been deprived."

I would suggest that the question of the issue of preference and the whole issue of the definition of discrimination emanated from a discussion paper prepared by the Legislative Assembly and the fact they have taken the time to bring this confusing question to our attention must mean they have some concern about it. I do not know whether you have any comment or whether you have seen this discussion paper.

Mr. Stone: I do not want to enter into the debate, because I think there is a debate on the principle here. I just want to make one small point. It is difficult to legislate that one can make a decision favourable to one without it in some way being unfavourable to another. There is that problem for me.

As far as using the word adverse is concerned, I must say I resisted that solely on the technical ground that it is difficult to tell what is adverse. It may be beneficial to someone applying



for a job not to get it because he can then stay on unemployment insurance or some such thing as that. One never knows what is actually adverse and what is not when it comes down to being made an issue of technicality, which is what the act will be reduced to eventually.

Ms. Copps: Mr. Chairman, I do not know whether it is appropriate at this point, but I would suggest that if the committee is not prepared to favourably entertain the motion calling for the deletion of preference, I think our representatives would have no choice but to suggest that the definition be deleted altogether. I think there is enough legal precedent for the exclusion of the definition altogether, as we have many codes in Canada that at present do not define the word "discrimination" and leave the terms of reference to the courts, which already have many judgements on record to define the word "discrimination."

I do not know whether it would be appropriate to entertain the first amendment as read and then argue based on my motion that potentially my amendment will not be accepted. Failing that, I would like to suggest the deletion of the definition altogether.

The Vice-Chairman: First of all, let me clarify this. Are you or are you not moving an amendment?

Ms. Copps: I have already moved the amendment. You have a copy of the amendment from before. The amendment as moved would suggest deletion of the words "or preference."

The Vice-Chairman: Do you wish to comment on that, Mr. Elgie?

Hon. Mr. Elgie: I already have. I just want to make it very clear that other members have spoken on the reason for this. We and our counsel feel that the word "preference" is there out of abundant caution, simply because the commission has run into situations where a preference has been given and the issue arises as a practical matter, whether that is discrimination or not.

There is no ulterior motive in adding the word, and I am sure there was not in Quebec. It is simply a matter of recognizing that there are two types of discrimination: exclusion and preference. It is trying to recognize that. Counsel has reviewed it for me and confirms that view. I still hold it; I will have to oppose that amendment.

Mr. Renwick: I find the definition immensely confusing. Where it is a key word in a bill such as this, surely we have to have language people understand. If we expect members of the public to say that a person has a right to equal treatment without discrimination because of any of the prohibited grounds and then you look at this definition, I find it extremely difficult. It does not convey very much to me. It is extremely awkward.

I do not know what the answer is. I had a note from David Lapofsky the other day expressing his concern about the term "differentiation." The quotation Ms. Copps gave from the paper prepared by the legislative library research was as my request

because I was worried about the definition of the term and what it means. Am I different from the minister? Does it mean something to him?

Hon. Mr. Elgie: To me it seems like a very clear-cut, distinct meaning--to differentiate, to make a differentiation--

Mr. Renwick: Does differentiation mean distinction?

Hon. Mr. Elgie:--which results in exclusion or some qualification that they cannot meet, or preference.

Mr. Renwick: I guess I have trouble with these differentiation words. Does differentiation mean to distinguish, to make a distinction?

Hon. Mr. Elgie: To draw differences which result in an exclusion or qualification or a preference being given to one group or another.

Mr. G. I. Miller: Mr. Chairman, for clarification, does that mean it gives you a choice in making a decision?

Hon. Mr. Elgie: No, that is discrimination to make those differentiations that result in the excluding of people.

The Vice-Chairman: We are off the discussion on the amendment. At this point, we should really be talking about the words "or preference." We should deal with that, and if we wish to deal with the general definition after we have finished with this amendment, we can do it then. Any further discussion on "or preference"?

8:40 p.m.

Mr. Renwick: On the question of "or preference," does not the definition require some such words, as apparently appear in the Quebec code, qualifying it, that have the effect of nullifying or impairing such right?

Hon. Mr. Elgie: Mr. Chairman, I think I already have. I do not follow the logic of the trouble the member is having. We are talking about some distinction or difference being attributed which results in someone being excluded, qualified in such a way that he does not get the employment, for example. Or someone being given a preference and someone else being excluded.

Mr. Renwick: Is it the same person who can be excluded and the same person who can be preferred?

Hon. Mr. Elgie: No. We went through this the other day at great length. In the case of the restaurant which says "whites preferred" as opposed to "no blacks allowed," one is a preference, the other is an exclusion, but they both result in discrimination.

Ms. Copps: If you will remember, our response to that was that qualification as well as preference would apply in that situation. You were setting a qualification that resulted in differentiation.

Hon. Mr. Elgie: If Ms. Copps and others would feel more comfortable if jurisprudence defined that discrimination, as it has in the past, I have no problem with that. We will just not define discrimination; we will leave it to jurisprudence. If you wish to make that amendment, I would be pleased to support it.

Ms. Copps: I will make the amendment that (c) be deleted.

The Vice-Chairman: Just a minute. We have an amendment on the floor now. The amendment we are dealing with is--

Ms. Copps: I will withdraw that amendment, and I propose another amendment that 9(c) be deleted from the act.

Mr. Eaton: You just defeat it.

Ms. Copps: I withdrew the other amendment. I am proposing that 9(c) be deleted.

Mr. Eaton: You do not normally move a motion to delete a section; you just defeat the section.

Ms. Copps: Okay, sorry. If the minister agrees that we will delete it, then we do not really want to defeat it; we want to delete it.

The Vice-Chairman: It is proper procedure to withdraw a motion. Now there has been another amendment moved on the same section.

Mr. McClellan: You will accept the deletion?

Hon. Mr. Elgie: Sure.

Mr. McClellan: Why?

Hon. Mr. Elgie: I do not care; I am satisfied to have jurisprudence define discrimination. What is everyone arguing about? I think the definition was fine. It dealt with exclusions, qualifications, preferences, and it was quite acceptable. But I do not think it is an issue one should lay one's body over the railway tracks for. The courts can quite adequately define discrimination, as they have in other human rights legislation.

Mr. McClellan: How have the courts interpreted discrimination in other jurisdictions? I gather only Quebec has a definition. Is that correct?

Hon. Mr. Elgie: I do not know how the courts have decided that. About the same as this.

Mr. Hess: It uses the same language.

Hon. Mr. Elgie: It is always subject to argument. Someone may have a different position. We thought this would make it easier for the purposes of procedures.



Mr. McClellan: I just want to know what we are doing, if that is not too much to ask. I do not have any problem myself with the last three words, "exclusion, qualification or preference." There may be something there that I am missing, but I do not know what it is. All I am saying is I do not understand what the concerns are. I have other concerns about the definition that relate to the use of the word "differentiation." They are concerns that have been brought to our attention by the ??Coalition on Human Rights for the Handicapped.

The Vice-Chairman: I think first of all we had better find out whether or not we have a definition to worry about. If there is no further discussion, we will call a vote on whether there is a--

Mr. McClellan: I was in the middle of some discussion.

Hon. Mr. Elgie: On whether to delete; you were commenting on whether to delete.

Mr. McClellan: The question is in order, which I am discussing--whether or not we have a definition and what that definition will be. I think we could have this discussion for a couple of minutes.

I wonder whether the ministry has had a chance to review the concern that had been put forward by the coalition with the request that "conduct" be substituted for "differentiation."

Hon. Mr. Elgie: Frankly, I have to tell you that I have concerns with that because I think the definition of constructive discrimination in section 10 is very clear. To insert the word "conduct" goes beyond the definition of constructive discrimination. It does not even put in the qualifications of reasonable and bona fide. I could not accept the alteration.

Mr. McClellan: Okay, that is important to know. In that case, I will vote for the motion to delete.

Mr. Renwick: May I ask if we were to vote for the motion to delete, and I am inclined to want to vote for that, what does that do to a clause, such as clause 10 which has the very same words in it, where it says, "A right of a person under part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons." What consequential amendment would we have to make to that section?

Hon. Mr. Elgie: I think that is a constructive discrimination section, and I think we do have to have some definition of what we are talking about in it. For the purposes of that section, I would leave it as is.

The Vice-Chairman: Okay, are we ready for the question?

Those in favour of deletion of '9(c). Six.

Those opposed to the deletion of the definition. One.

Motion agreed to.

The Vice-Chairman: Are there other amendments to section 9? We are at section 9(g) now.

8:50 p.m.

Mr. McNeil: I move that section 9(g) be amended by adding thereto after the word "conduct" the following: "that is known or ought reasonably to be known to be unwelcome."

The Vice-Chairman: This is the same wording that has been added to--

Hon. Mr. Elgie: It was already in section 6(3)(a), and we simply brought the definition of harassment, including sexual harassment, in line with the definition of sexual solicitation, which requires that someone knows or ought reasonably to know that it is unwelcome.

Mr. McClellan: Would you say that again?

Hon. Mr. Elgie: Do you have the reprinted bill?

Mr. McClellan: Yes.

Hon. Mr. Elgie: If you will turn to section 6(3)(a) you will see there that the definition of sexual solicitation requires that the person knows or ought reasonably to know that it is unwelcome. It was our conclusion that that same knowledge or those facts being present, that one should have knowledge, should be present in the case of harassment from any cause as well.

Mr. McClellan: That was not my concern. My concern was the word--I do not know whether it is a justifiable concern or not--but the use of the word "course", that "harassment" means "engaging in a course of vexatious comment or conduct."

Earlier we deleted "persistent" from sexual solicitation, but I am not sure what a "course" of vexatious comment or conduct is. It sounds to me that we are back giving the dog one free bite.

Hon. Mr. Elgie: I hope you acknowledge that we have recognized that in the case of sexual solicitation where there ought reasonably to be knowledge, that was a legitimate one that I responded to. I do have to tell you that harassment is a vague area; it is a new area--harassment on many grounds, including race, creed, colour and sex--and we are entering into the area of relationships between people that may often be difficult to define whether it is harassment or not.

I think there is a great concern and legitimate fear out there that we are saying that people kidding by the water cooler might be considered to be harassment. I think society has a right to know that it is not going to be a single, casual incident but rather a course of conduct that legitimately upsets one's capacity

to function reasonably at work and in the home environment that we are attacking in this legislation, and not casual relationships that are often difficult to assess. I mean that quite sincerely. I think this is a new area; it is an area that no other human rights code has approached, and I think we have to approach it with a degree of sensitivity. I say that quite sincerely.

The Vice-Chairman: Any other comments?

Mr. McClellan: I have trouble understanding why sexual solicitation is advanced as not having to be persistent, but racist harassment could be required to be repeated; but to what point?

Hon. Mr. Elgie: What is vexatious to one may not be vexatious to another. Something that provokes you, that irritates you, that upsets your lifestyle may not be provoking to another. What we are trying to say here is that in this new area in relation to human relationships we think it is important that there be some degree of certainty established by a course of conduct.

Mr. McClellan: Presumably, if it was not vexatious to me I would not file a complaint.

Hon. Mr. Elgie: If it is a matter of what is vexatious to you; it might not be vexatious to another. What we are talking about is a course of conduct so that the person who is going to be subject to that charge, which might be a vexation to one and not to another, has some degree of certainty and understanding that the person complaining about the act, whether the perpetrator agrees or not, holds an honest view that he or she does not like it and does not want it. I say quite honestly that it is a new area where we are entering into interpersonal relationships, and I think we have to approach it from that point of view.

Mr. Riddell: Sure. If Ross were called a Socialist it would not bother us, but if I were called a Socialist I would defect.

Mr. Renwick: Be careful, now; you'll get another editorial.

Hon. Mr. Elgie: Yes, but that doesn't bother him; he'll get a letter and bring it back and read it.

Mr. Riddell: We'll get our point on the record.

Hon. Mr. Elgie: Every time he gets criticized he brings a letter in.

Mr. McClellan: Let me put it very bluntly and very crudely, but I mean this quite sincerely: How many times does a person who is working in a place of employment have to be called "Paki" before it becomes a matter of harassment? Two times, three times?

Hon. Mr. Elgie: Well, what do you think the definition of harassment is itself?



Mr. McClellan: I don't know. I'm not trying to be difficult about this; I'm trying to get an understanding of what the interpretation of this section is.

Hon. Mr. Elgie: I think what we have to do is start back at first principles. "Harass," as I understand the word, means some repetition. By saying that it's a course of conduct we are simply reinforcing the definition of harassment in the minds of the public, who I think have some concern about what might be construed by one as being normal chit-chat by the water fountain but by another would not be, and reinforcing the requirement that there be a course of conduct. Because I say that, by definition alone the term "harassment" means that: a course of conduct.

So it is simply to reinforce that, because you know as well as I do the great concern that has been expressed about the concept of entering into what many consider to be social relationships that perhaps shouldn't be subject to this kind of legislation. If we are going to do that we should do it knowing that there has to be a degree of certainty about the legitimacy of the claim.

Mr. McClellan: I have read the nonsense that has been written on this section, just as everybody else has, principally in the Toronto Sun. I just don't think that those concerns are valid or should be particularly catered to; that's my own view. In a definition in which, as the minister says, the operative word "harassment" itself means a course of conduct and then "course of conduct" and "course" are repeated, it seems to mean you are inviting a broad interpretation.

Mr. Renwick: I think I share the same concern that my colleague is speaking about. We haven't discussed it. Let me try this: I think there are three situations that I would like the minister to speak to. I don't have any problem where there is a number of occasions on which the conduct takes place; to me that is clearly harassment. If every night at six o'clock I go out to pick up my paper or my mail at the mailbox and somebody is there and night after night he harasses me, I have no problem with that as being within the definition of the term.

I agree, on the other hand, that we do not want the definition to be so refined that an isolated incident--the use of the term somewhere on a single occasion where the time span is negligible--is going to be regarded as harassment. But I have difficulty with the single occasion over time where somebody follows you for a period of time down the byway, or wherever you happen to be going, and over that period of time continues to talk to you in a way that is offensive and that the person knows is offensive, too, on a prohibited ground.

9 p.m.

Is it harassment when it's a single occasion, or would the person then escape because that is not a course of conduct in the sense that it's a number of occasions? Could a person walk in and say, "Oh, that was just one occasion"? That middle ground bothers

me very much. I don't know if this is the same point my colleague made.

Hon. Mr. Elgie: I was willing to let the common law decide what discrimination means. My own opinion--and I can't interpret what the various situations would be--is that that would be a course of conduct. Even though there is a continuity to it, it's repeated, it's carrying on. That's my view of it.

Mr. Renwick: I think the word itself is fine. I don't know why we have to define it. That's my view.

Hon. Mr. Elgie: Well, I think there really is a need to have some certainty so that the people who read this act know exactly what kind of thing we are talking about, so they know that a casual mistake on one occasion, or something, is not going to take someone before a human rights officer. I really do. An isolated and intemperate outburst is something we are all subject to, except for you and Ross McClellan. But the rest of us do occasionally have intemperate outbursts in the Legislature, and I think they shouldn't be considered harassment unless they continue from day to day. Now, I know you wouldn't do that.

Mr. Copps: On a point of order, Mr. Chairman: Are we not discussing the amendment, which is only the last part of this point, or are you discussing the whole thing? Are we not just discussing--

Hon. Mr. Elgie: Yes.

Ms. Copps: So "a course of conduct" is really extraneous to that particular amendment.

Hon. Mr. Elgie: It's a section as amended, actually. We're going through the whole bill section by section. In this section we are looking at "as amended."

Ms. Copps: Okay. Well, I am just saying that if they have objections to "in a course of" maybe we should at some point entertain an amendment and deal with it in that way.

The Vice-Chairman: I allowed it to go on because, although it is not part of the amendment, it does relate to it.

Mr. J. M. Johnson: Mr. Minister, I would like to take the opposite approach to Ross. He says it's too broad an interpretation. I have the feeling that certain members of this committee would like to draft legislation that's so strait-laced and ironclad that every person who looks around would be slapped in cuffs. We are dealing with people out there, and surely you don't take them all as criminals.

I hate to think of the legislation you would draft if you had your way. I find it offensive that all citizens are classed as hoodlums until they can prove they're not. Surely this is a reasonable amendment and one that deals with reality. And for heaven's sake--

Mr. McClellan: The member must be hearing (inaudible) inside his own head.

Mr. Riddell: That's the idiocy my veteran friend was referring to.

Mr. J. M. Johnson: You know, it's very apparent, Mr. McClellan, that you can say whatever you like, but when anybody presents another point of view you have to interject.

Mr. McClellan: No. Don't put words in my mouth; that's all I ask.

Mr. J. M. Johnson: Nobody has to put words in your mouth.

Interjections.

Mr. McClellan: It's not much to ask, Jack.

Mr. J. M. Johnson: Mr. Chairman, Mr. Minister, I would like to support the amendment as it's drafted. I think we're getting into the type of legislation that's extremely offensive to most of the people out in real society. We don't need the type of legislation that has been presented by a couple of the members. Let's be reasonable and fair.

Mr. McClellan: Well, I don't mean to prolong this, Mr. Chairman, and I won't. But I was simply asking for an interpretation of the minister's own legislation. I said nothing about hoodlums; I made no suggestion about changing the language of the legislation. I was simply asking a question. What set you off I have no idea, but it wasn't anything I said. Obviously, whoever--

Mr. J. M. Johnson: Who else is inside your own head exploding and reverberating?

The Vice-Chairman: Those in favour of the amendment? Those opposed?

Section 9(g) agreed to.

Section 9(h) and (i) agreed to.

On section 9(j):

The Vice-Chairman: Mr. McNeil moves that section 9(j) of the bill be struck out and the following be substituted therefor:

"'Services' does not include a levy, fee, tax or periodic payment imposed by law."

Ms. Copps: Can you explain what the amendment means, because I do not really know?

Mr. McNeil: Discussions with Treasury indicated that there are certain periodic payments made under the Gains program



and others, OHIP premiums, and so forth, so the words "periodic payment" had to be added, that is all.

Ms. Copps: I have no objection to that. Excuse me, just from a procedural point of view, the amendment that was passed around (inaudible). I do not have any objection to the inclusion of "periodic payment," but I would like to see the definition elongated. So should we vote on it and then go into the amendment?

The Vice-Chairman: Yes, we can carry the amendment, but not necessarily carry the section. Is the amendment carried?

Motion agreed to.

Ms. Copps: These clauses or amendments were passed out last week, so most of you should have copies.

The Vice-Chairman: Ms. Copps moves that section 9(j) of the bill be struck out and the following substituted therefor:

"'Services' includes, without limiting the generality of its natural meaning, education, recreation, communications, entertainment and transportation, but does not include a levy, fee, tax or periodic payment imposed by law."

Ms. Copps: I included "periodic payment" in reference to the amendment that was just passed. The rationale behind the amendment was an effort to expand the definition of "services" that would be accessible to the public. One of the reasons for that is, if you recall, some time ago there was a decision by the Supreme Court of British Columbia that limited accessibility to services in the communications industry, specifically a newspaper, to a particular group on the ground that the service was not accessible to everyone, because it was purchased by subscription and targeted to a special group. So we feel the inclusion of several areas of services will cover all the potential services that could be offered in the community, and that is certainly going to eliminate the kind of problem that presented itself in the British Columbia Supreme Court decision. That is the rationale behind the amendment.

Hon. Mr. Elgie: Mr. Chairman, I have made the argument, not before this committee but in the past, that there is always a danger when one attempts to expand definitions in this way that one, in effect, is really limiting them. I think that was the kind of approach Ms. Copps was taking in the definition of "discrimination," and I agreed the courts should be left to define discrimination.

But I think the same argument holds here. There is a principle of law, ejusdem generis, which says that, in spite of the words, "without limiting the generality of the foregoing," if you refer to certain things like recreation, communications and entertainment that have something in common, you may be restricting the definition of "services" in those areas.

Now I know in the definition of "handicapped" we did not follow that. But the coalition and others will recall there were legitimate concerns that certain areas might be overlooked in the

definition of "handicapped" if they were not included. Certain members in the House had a special interest in an area like diabetes. The member for Windsor-Walkerville (Mr. Newman) had a particular interest, it might be added, because that has been a special interest of his over the years. We did it in that case. But as a general rule, I oppose broadening definitions, and I have to oppose this addition to the definition of "services."

9:10 p.m.

Ms. Copps: One could get into two different legal arguments. We are of the position that the words "without limiting the generality of its natural meaning" do cover the expansion into all services that would be considered applicable by the courts. However, we do feel it is important to spell out, as I said previously, because of the British Columbia Supreme Court decision, the services that should be considered as part of the services in the community context. There have been instances where certain services we would normally consider to be public services, for example, newspapers, have not been made accessible to the whole community. We feel this is an attempt to address that legal limitation.

Hon. Mr. Elgie: I am sure you have had good opinion on it. I remind you that the BC code does include in it the phrase, "a facility customarily available to the public," which this code does not. That may have led to the decision in that court. I repeat my argument. I would not favour broadening the definition.

The Vice-Chairman: Are we ready for the question? Those in favour of the amendment?

Mr. Renwick: What is the amendment?

Ms. Copps: You should have a copy.

Mr. Renwick: I should have, but I have so much paper, I couldn't possibly find it.

The Vice-Chairman: Those in favour? Those opposed?

Mr. J. M. Johnson: Mr. Chairman, does Mr. Eakins have the vote or Mr. Miller? I thought John voted before.

The Vice-Chairman: He had his hand up but he wasn't counted.

Ms. Copps: It was a tie.

Mr. McNeil: I think the vote should be called again.

Ms. Copps: No.

Mr. Brandt: In view of the confusion, I will ask the vote be called again.

Ms. Copps: No. You cannot call the vote twice. The vote

was called. The chairman now has to consider--there's no confusion for the people who are here.

The Vice-Chairman: The chairman, I understand, votes to break the tie. In this case, I will vote to oppose the amendment.

Mr. Brandt: Excellent decision.

Hon. Mr. Elgie: Thank God for democracy.

Ms. Copps: Are you substitute chairman, Mr. Brandt?

Mr. Brandt: I am substituting for Mr. Harris.

Ms. Copps: If you are substituting for Mr. Harris, then you are supposed to be the chair.

Mr. Brandt: No. I am substituting as a member. Mr. Harris is the chairman and a member of the committee.

The Vice-Chairman: Are we now prepared to carry 9(j)?

Section 9(j) agreed to.

The Vice-Chairman: Mr. McNeil moves that section 9 of the bill be amended by adding clause (k) thereto:

"(k) 'Spouse' means the person to whom a person of the opposite sex is married or with whom the person is living in some kind of a relationship outside of marriage."

Hon. Mr. Elgie: Mr. Chairman, I hope this will not get us involved in lengthy discussions. This definition of spouse is added solely for the purpose of section 23(d), which relates to the issue I referred to in my statement of nepotism and antinepotism. It is simply to provide a definition of the word "spouse" in section 23(d). If anyone wants to debate that section, we can debate it when we get to it. But that is the sole reason for the introduction of the definition. That is the only place the word "spouse" is used.

The Vice-Chairman: Are we ready for the question? Those in favour?

Section 9(k) agreed to.

Mr. McClellan: I have an amendment to introduce at this point.

The Vice-Chairman: There may be other amendments.

Ms. Copps: We are still on 9.

Mr. McClellan: Mine is to 9 as well.

The Vice-Chairman: I believe that is the end of the government amendments on that particular section. Ms. Copps.



Ms. Copps: You should have a copy of this amendment also from last week.

The Vice-Chairman: Ms. Copps moves that section 9 of the bill be amended by adding thereto the following clause (h)(a):

"'Reasonable accommodation for handicapped' means the conditions that are necessary to enable a person having a handicap to enjoy a right under part I and that are capable of being provided at a cost that would not cause undue hardship, including (1) the means that are appropriate to enable a person having the handicap to have access to and enjoy the amenities of premises and facilities, and (2) in respect of a right under subsection 1 of section 4 of the act, the adaptation of equipment and essential duties to enable a person having the handicap to perform the employment."

Ms. Copps: Basically, I think the thrust of this amendment responds to--most of you would have received a copy of the release from the Coalition on Human Rights for the Handicapped, in which there are some very serious concerns about the legislation.

The coalition feels if reasonable accommodation is not included, the present legislation falls far short of the ideal we are looking for. It feels the present code as it is developed could even call for situations like oral interviews for the deaf, printed application forms for the blind, IQ tests for the mentally retarded seeking janitorial work, work stations easily modifiable to accommodate a person in a wheelchair at no cost. Under the present situation, those kind of modifications are not required unless and until there has been a finding of discrimination by the board. So we are actually setting up a very confrontational situation between an employer and an employee.

I think it goes back to some of the arguments we made when we introduced the notion "and access to" at the very beginning of the code. That is the notion of reasonable accommodation in terms of low cost or no cost accommodation that would not cause undue hardship. I stress that the undue hardship should not be caused by the accommodation. Unless the notion of reasonable accommodation is included in the first section of the bill and if the government continues with a policy whereby reasonable accommodation can only be required after a finding of a human rights violation has been made, we are not going to solve, or even begin to solve, some of the very severe employment problems facing the handicapped in our community.

We are also going to be setting up a very confrontational situation in which handicapped people will be forced to get findings against employers or to develop cases for findings on the basis of discrimination in order to have simple things like access into a building that could have been a low-cost or no-cost modification if they were built into the reasonable accommodation clause, as we are suggesting.

9:20 p.m.

I would like to stress, because I know that the sole

objection to the inclusion of reasonable accommodation is the cost to an employer of making the kind of modification that may be required if reasonable accommodation is endorsed as a principle in the pre-finding section of the bill, that we are specifically including a cost that would not cause undue hardship. And we feel that it's crucial to this section of the bill because, obviously, we do not want to run into the ridiculous situation where a small business person who operates a second-floor walkup is going to have to put in an elevator, or some other such really illogical notion.

We are looking at low-cost and no-cost accommodations, reasonable accommodations that would not cause undue hardship. This is the only way we are going to be able to give the handicapped access to the kind of employment and the kind of opportunities this bill is trumpeting.

I can say this about the minister's introduction of the elements for the handicapped in the bill: I believe that his intention is very honourable. I think he was personally concerned about the handicapped at heart when he introduced this legislation. But I agree with the people who said of this bill--and I believe that one of the people who made this comment is here in the audience tonight or on the committee--that it is a Cadillac chassis with a Chevrolet engine. I have nothing against Chevrolets, mind you, but we're talking about the substance and the guts here. The guts of the legislation for the handicapped are included in this amendment. If this amendment on reasonable accommodation is not adopted, the opportunities that handicapped people are awaiting with the introduction of this bill just will not materialize.

I emphasize that we are talking about low-cost or no-cost accommodation, reasonable accommodation that would not cause undue hardship. We are talking about adapting essential duties of the job. And I believe that if we are sincere about trying to improve the employment situation for our handicapped we have no alternative but to support this amendment, because without this amendment we have a human rights code that has no teeth.

In introducing these changes to the code we are trying to allow the handicapped that kind of reasonable accommodation, that reasonable access to employment. Unless we include this definition of reasonable accommodation we will not achieve that. In fact, because of the public perception and understanding of the bill to date I fear that we are going to raise the hopes of thousands of disabled people in this province, hopes that they might finally have an opportunity to get a job and to get out into the work force, only to have them find that upon application of the legislation they don't have that right. And they will not have that right under the present legislation without this amendment unless there is a finding of discrimination against an employer.

I suspect that we do not want to establish a climate of confrontation, where an employer has to have been found guilty of a human rights violation before accommodation is made. We want to establish a climate in which an employer is encouraged to make a low-cost or no-cost accommodation so that in general we can open up the employment market for all our handicapped persons.

That is the notion behind this amendment. I feel that if there is nothing else we can do to change this bill, this amendment is critical, it is crucial, to the handicapped community. If we choose to set it aside we are effectively cutting off any hope they might have of becoming working and contributing members of the community.

Mr. McClellan: Mr. Chairman, I had actually intended to move basically the same amendment. I agree with Ms. Copps that the reasonable accommodation amendment goes to the guts of the human rights legislation as it relates to handicapped people, and I don't understand how the ministry can intend to proceed without a reasonable accommodation clause. I mean that quite sincerely; I don't see how the bill can work without a reasonable accommodation provision.

It has to be here in the definition section so we can put reasonable accommodation into section 16, which states that a right is not infringed for the reason that a handicap renders a person incapable of performing essential duties. That section makes no reference to reasonable accommodation. Now, I'm sure the minister, who has met many times with many handicapped individuals, groups and organizations, is familiar with the arguments, and I don't intend to go through the whole litany of reasons. But I don't understand, and I hope the minister will explain, how such an important omission can still be in the bill at this stage.

There is nothing that requires large corporations to make sure their personnel offices are accessible to people in wheelchairs. That does not constitute any kind of discrimination whatsoever, as I understand the bill without a reasonable accommodation provision. How can you talk in any meaningful way about prohibiting discrimination against the handicapped if you're not even prepared to insist that those who can afford to do it without undue hardship--and we stress that: without undue hardship in terms of cost--have an obligation to do what they can afford to do to make their premises available? Companies will continue to discriminate by virtue of the fact that handicapped people can't even get in the door, can't even get into the personnel office in order to take an interview for a job.

Second, there is absolutely nothing in this legislation to require those who can afford to do so to modify the shop floor or their places of employment, their work places, to accommodate handicapped persons who could potentially be employed. So they can continue to discriminate against handicapped people on the legalistic ground that nothing requires them to accommodate disabled persons.

Again, I mean this quite sincerely; I don't understand how this legislation is designed to do what the minister and I have talked about a number of times, which is to break job slots loose for people who are traditionally excluded from them. This legislation is a key to achieving that objective, which I know the minister shares; he has spent a lot of time and energy pursuing that objective and to that end he has set up a number of programs in his ministry. I know he shares the objective I am talking about,



but by leaving reasonable accommodation out of this bill he makes it virtually impossible to use this legislation to achieve that end.

I emphasize that we are talking about reasonable accommodation at a cost which does not cause undue hardship. I think it is entirely legitimate for society to insist that its places of employment bear the cost, to the extent that they are able to do so, of making jobs available to those who have hitherto been excluded. I await with some interest an explanation from the minister of how he can justify the omission of reasonable accommodation.

Interjections.

The Vice-Chairman: I am trying to keep organized chaos in here, please.

Any questions or comments?

Mr. Lane: I'm concerned, Mr. Chairman. Ms. Copps talks about low cost and no cost. There's no such thing as no cost, and there's very little low cost any more. I put eight windows in my house last month and they cost me \$3,500. If I'm a businessman and I have to put eight doors in because they are too narrow, that's going to cost a lot of money; so there is no job there for the handicapped person because the guy is no longer in business. So I think there are two sides to the story. There is no such thing as no cost--we know that. I don't know where you got that phrase from.

Ms. Copps: I think this question was asked before. No cost would be something like a shift change. A shift change could be considered a no-cost.

Mr. Lane: That has nothing to do with the employer; that has to do with another employee.

Ms. Copps: But an employer would authorize it, that's all. That would be one example of a no-cost accommodation.

Mr. Lane: I'm talking about a building accommodation.

9:30 p.m.

Hon. Mr. Elgie: Well, Ross, you have asked for my comments. I don't know if you were here the other night when we spent at least an hour or so going over this same issue. We discussed amendments relating to access, which were added to the first five sections. However, if you weren't here I'll be glad to tell you the government's position on it, which we discussed in the House when we debated Bill 209 and Bill 7 on second reading.

The position of the government is that this legislation and human rights legislation should be aimed at discrimination. There may be, and I am sure there are indeed, a number of situations that exist in employment and housing which may create difficulties and even barriers to employment for the handicapped, but our position is that when there is evidence of discrimination against the

handicapped a board of inquiry may order certain adjustments that do not cause undue hardship.

I know there are many who don't accept that. But I would ask you to look at section 10 on constructive discrimination and see if that doesn't give the commission authority to investigate complaints even where on the face of it there may not be obvious evidence of discrimination but rather simply a barrier. That gives the commission an opportunity to carry on its investigation and to carry out its conciliation as well as its investigation of the whole matter. So they are not precluded from carrying out the investigation, and I think that's the appropriate approach at this time in this area.

There is a lot of goodwill out there for the handicapped now. I've travelled throughout this province, and you and I have talked about this. I happen to feel that where there are problems with regard to buildings and so forth those are matters to be addressed in the building code. They may not be addressed quickly enough for some people, but they are being addressed. To start considering inadvertent acquisition or occupation of an office building that may be inaccessible as discrimination is could well cause moderate society to lose some of its enthusiasm, which I think it has now, to correct the wrongs that the handicapped have faced over the years.

That's the government's position. I have gone over it in greater detail in the past, but I have to reaffirm that position.

Ms. Copps: In looking at it from our perspective, exactly the kind of situation we do not want to see is one in which a company has to be found guilty of discrimination in order to make reasonable accommodation.

For example, I don't think the people of this province realize that, under the new legislation, if you are an employer who has a building that is inaccessible and you do not interview anyone, you have a defence in that your building is not accessible, even though you may employ 1,000 people and you certainly have the financial means to make a reasonable modification of the door frame. Yet that, in and of itself, would be permitted under this legislation.

We are not talking about making findings against companies specifically for not being accessible. We are talking about giving the human rights commission the right to come in and make a finding for reasonable accommodation if and when it has been demonstrated that there is no undue financial hardship. I think the practice of moving in on a charge of discrimination and turning aside the goodwill of the community is exactly what is going to happen unless reasonable accommodation is included, because it will only be after a finding has been made by a board of inquiry that a company will be forced to make reasonable accommodation and meet accessibility requirements.

So you are going through the whole board of inquiry and you are getting all those bad feelings going between a prospective employee and employer. Here you have the opportunity with the

reasonable accommodation clause to request no cost or low-cost accommodation.

I pointed out when we discussed the issue of access, too, that the office for contract compliance in the United States lists a series of reasonable accommodations that range in cost from zero to \$3,000. The highest-priced accommodation was \$3,000, so we're not talking about thousands of dollars and we're not talking about imposing undue hardship on small businesses. Heaven knows, in this time of high interest rates that would be the last thing we would want to do.

We are talking about accommodation that would not cause undue financial hardship, to preclude the kind of confrontation that is going to happen if every time you want to get access to employment you have to go to a board of inquiry for a finding of discrimination. I guess enough has been said about that.

Hon. Mr. Elgie: I would just like to add, by way of refreshing our memories about what goes on in the rest of this country, that we, with this bill as it is proposed now, would be well ahead of any other legislation in any other province in any event. I might point out that Saskatchewan, for example, requires a prior finding of discrimination and then gives the board of inquiry only the power to recommend. In its order it may make recommendations about undue hardship. So far from having this legislation painted as a Cadillac with a Chevrolet motor, it really is quite a Cadillac in terms of the rest of the country and other provinces in particular. I would just like to reassert the arguments I have already made and say they are legitimately made, and we think this bill is a major step forward.

Mr. Riddell: Are you saying, Mr. Minister, that section 10 would cover the case of a handicapped person in search of employment who is not able to gain access?

Hon. Mr. Elgie: That allows the commission to start investigating it and to conciliate it and to bring into force all the grants that are available from the federal government and the provincial government for rehab, WCB and Wintario, all the things that are available. But only if they find discrimination. Then they go to a board of inquiry that can then order certain things to be done that do not cause undue hardship.

Ms. Copps: On the statement that this is better than any other legislation that exists across the country, I would refer the minister to British Columbia. I believe we all have a copy of the information that was issued by their Ministry of Labour, in which if a person is denied employment, the employer has to establish that there is a bona fide occupational qualification when deciding not to hire a person with a disability.

The employer's position will be accepted if it is established that the individual cannot do the job even if reasonable accommodations are made, the necessary accommodations cannot be made by the employer, because of an individual's condition, et cetera, employment in a particular position would be hazardous to the safety or health of other employees or the public, and the



physical or mental requirements demanded for the job are inherent to the performance of the job, more or less by definition.

There you do have a code that includes the definition of reasonable accommodation and includes the notion that reasonable accommodation can be made by an employer unless otherwise determined by the British Columbia Human Rights Code. So I would suggest when the minister says this legislation is innovative, in fact, he has not taken a look at legislation that exists in other provinces across this country.

Hon. Mr. Elgie: I would remind you that those are draft guidelines that have never been put before any board of inquiry nor have they ever been tested by the courts. They are not in the Human Rights Code of British Columbia.

Ms. Copps: They are in the British Columbia Human Rights Code at this time. It says: "The attached document is organized with an outline of provisions of the code," and that is the outline of the provisions of the code as they exist.

Hon. Mr. Elgie: Those are their draft guidelines.

Ms. Copps: As they exist at present in the legislation. If you are saying they have not been tested by the Supreme Court and you feel they will not hold up, that is a question that would have to be determined in our courts as well. Nevertheless, the principle of reasonable accommodation is included, and it is included in a manner that is far superior to the legislation we have before us at present.

The Vice-Chairman: Okay. I think we can call the question here.

Those in favour of the amendment? Those opposed?

Motion negatived.

Mr. Lane: Mr. Chairman, just a point of order: It seems to me you are going to have to renumber all the sections because we deleted one section in 9, did we not?

The Vice-Chairman: Yes. They will have to be renumbered.

Section 9, as amended, agreed to.

9:40 p.m.

On section 10:

The Vice-Chairman: Mr. Lane moves that section 10 of the bill be struck out and the following substituted therefor:

"A right of a person under part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom

a person is a member, except where (a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances; or (b) it is declared in this act that to discriminate because of such a ground is not an infringement of a right."

Hon. Mr. Elgie: Mr. Chairman, the main substance of that amendment is really because in reading section 10 in the old Bill 7, it was our opinion that a complaint could only be brought under that section if there were a group of persons who had been identified and that an individual might have been precluded from bringing a complaint. So the wording has been adjusted so that an individual who is a member of a group that has been so discriminated against can bring a complaint. I think it is a very helpful amendment.

Ms. Copps: Can I just ask a question on the "exclusion, qualification or preference" phrase? We touched on that briefly. Since we eliminated 9(c), I just want to reiterate that you do not feel there will be any problem with the use of the words "exclusion, qualification or preference"?

Hon. Mr. Elgie: I really don't.

Ms. Copps: Okay.

Motion agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

On section 12:

The Vice-Chairman: Mr. Eaton moves that section 12 of the bill be struck out and the following substituted therefor:

"12(1) A right under part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem or other similar representation that indicates the intention of the person to infringe a right under part I or that is intended by the person to incite the infringement of a right under part I.

"(2) Subsection 1 shall not interfere with freedom of expression of opinion."

Hon. Mr. Elgie: I think that amendment is self-explanatory, Mr. Chairman. You will recall there had been several criticisms of the proposed section 12 in the previous Bill 7. It was felt by some that it could infringe on freedom of expression of opinion, and so we have reverted to the language that is in most other human rights codes and was pretty well in our existing Human Rights Code, which dealt with notices, signs, symbols, emblems or other similar representations. I think that clears up the concern there was, particularly in the mind of the

press, that any freedom of expression of opinion might be interfered with.

Mr. Eaton: If I may differentiate there with freedom of expression of opinion, you are talking about something being said when posting a notice, for instance?

Hon. Mr. Elgie: Yes.

Mr. Eaton: How do you separate that? I could express the opinion I do not like bald-headed fellows, but I cannot put up a sign saying I do not like bald-headed fellows. How do you answer that, Bob?

Hon. Mr. Elgie: Maybe I will get Mr. Hess to speak to this.

Mr. Hess: I think one has to look at the language. The sign or symbol has to indicate the intention of the person to infringe on a right. In other words, it has to be coupled with the infringement of a right. For example--

Mr. Eaton: I can say "I do not like bald-headed fellows," but I cannot say, "Don't hire a bald-headed fellow".

Mr. Hess: You can do that in any event. Let's suppose you have a "help wanted" sign and you have a swastika, for example, with it, or you have "no Irish." I am going back to the days in Boston, and one can go to other days, too. It has to be coupled with the indication of the actual intention of infringing the right. That is, you are going to discriminate because of race, creed, colour, and so on. It has to be linked together. To simply put a sign up saying "I do not like so-and-so," would not contravene this section as I perceive it.

Hon. Mr. Elgie: It should say, "So-and-so need not apply."

Mr. Hess: Yes.

Mr. J. M. Johnson: Does that mean a person still has the right to criticize Jack Riddell?

Hon. Mr. Elgie: No.

Mr. Renwick: I would like to ask the minister why he did not include the word "statement" before the word "notice" in the third line of that amendment. A "notice, sign, symbol, emblem or other similar representation" connotes something visible. I think he has gone too far in meeting the legitimate concern that was expressed. Surely, a right under part I could be infringed by any person who publishes the statement that indicates the intention of the person to infringe a right under part one or that is intended by the person to incite the infringement of a right. Surely subsection 2 prevents any intrusion upon freedom of expression, but the publication of a statement by itself should be an adequate and sufficient--

Hon. Mr. Elgie: What about a letter to the editor?



Mr. Renwick: We cured that in the Libel and Slander Act. We had a long discussion about letters to the editor.

Hon. Mr. Elgie: I agree with them, but you and I see letters in that column which we may find offensive, yet they are opinions of people. They make statements about who should be allowed in the country, who should be allowed to work and so forth.

Mr. Renwick: We ought to curtail that. Let us say, for reasons unknown to me, if some editorial writer in some paper were to advocate in an editorial by a statement which could be said to incite the infringement of a right under this act, the mere publication of that statement should be actionable. It is not an intrusion on the freedom of the press to be subject to that limitation.

Hon. Mr. Elgie: Could I ask that that section be stood down while we look at that?

Mr. Renwick: I would appreciate it if you would.

The Vice-Chairman: Okay, we will stand that down.

Ms. Copps: Before you stand it down, the flip side of what Mr. Renwick is saying relates to research or any other kind of alleged infringing discrimination. I think the tight parameters he is setting could be very dangerous to freedom of the press.

Hon. Mr. Elgie: There are some books and articles written by people I certainly do not agree with, but they should be subject to pure review and criticism. We will stand that down and think about it.

Mr. G. I. Miller: I was asked on Wednesday with regard to hiring teaching staff, let us say, at the Christian Reform Church. Do they have a right to hire whom they deem suitable for the position?

Hon. Mr. Elgie: Yes. Let me check the section on that. If you have the reprinted bill, section 23(a) says, reading selectively: "A religious institution or organization that is primarily engaged in serving the interests of persons identified by their religion, by their creed, may give preference in employment to persons similarly identified if their qualification is reasonable and bona fide."

9:50 p.m.

On section 13:

Mr. Havrot: Mr. Chairman, I move that section 13 of the bill be struck out, that section 14 be renumbered accordingly and that the reference to "34" in the last line of subsection 3 of renumbered section 13 be amended to read "36."

Ms. Copps: Maybe I did get a copy in the package, but it's not in the reprinted version in that way.

An hon. member: Is it not?

Ms. Copps: Maybe it is. Okay.

Hon. Mr. Elgie: It was section 14 in the original bill. The only change in it is in line with the renumbered bill.

Ms. Copps: Okay. In the amendment you moved there you moved that section 13 be moved back, that section 14 be renumbered and that the reference to "34" in the last line of subsection 3 is now in section 14?

Hon. Mr. Elgie: Subsection 3 now says "34," and under the reprinted bill that "34" would become "36." That's the only--

Ms. Copps: Okay. You are not removing section 13 and moving it back; you are just striking it altogether.

Hon. Mr. Elgie: Renumbering it, really: it becomes 13 instead of 14.

Ms. Copps: Section 14 becomes--

Hon. Mr. Elgie: Section 14 becomes 13.

Ms. Copps: Okay. Then section 13 is struck out altogether?

Hon. Mr. Elgie: Just for the purposes of renumbering.

Ms. Copps: Where does 13 move to?

Hon. Mr. Elgie: That's the mixed-motive section. You will recall that in my opening remarks I said we were concerned about the issue of mixed motives: for instance, someone who is discharged for a variety of reasons; included in those reasons might be the fact that he was a certain religion or colour, but he might also be discharged for absenteeism or a variety of other reasons, and he was also a certain religion.

This section, we decided, would have incriminated an individual regardless of whether or not the religious aspect was the proximate cause of the dismissal. So we have decided to leave the matter as it is in other legislation. For instance, in the Labour Relations Act the issue of mixed motives comes up very frequently. We decided to leave that in common law jurisdiction, and my understanding of the common law is that it's related to what is the proximate motive.

If you follow labour relations it comes up very frequently in that. It is not defined in the Labour Relations Act, so we have decided to leave that up to jurisprudence. It may change from time to time.

Ms. Copps: The issue of mixed motives?

Hon. Mr. Elgie: Yes, the issue of mixed motives. They change from time to time in the jurisprudence, and there's no

reason that the code shouldn't follow along with whatever the jurisprudence is.

Motion agreed to.

The Vice-Chairman: On section 14.

Mr. Havrot: Mr. Chairman, I move that the bill be amended by adding thereto the following section: "A right under part I to nondiscrimination because of age is not infringed where an age of 65 years or over is a requirement, qualification or condition for preferential treatment."

Mr. McClellan: Sorry, Mr. Chairman, but what happened to old section 14?

Hon. Mr. Elgie: Old 13 was struck out, 14 became 13 and we're adding a new 14 to deal with--

Mr. McClellan: We haven't dealt with old 13.

Hon. Mr. Elgie: Yes we have. We just passed.

Mr. McClellan: I have an amendment.

Mr. Renwick: Surely in the confusion of that amendment we should be allowed to place an amendment to what was originally section 14.

The Vice-Chairman: Okay.

Mr. McClellan: Thank you, Mr. Chairman. I move that section 13(5) be deleted.

Hon. Mr. Elgie: Would you try to give us these things a little ahead of time? I know it's troublesome, but--

Mr. McClellan: You're getting them as fast as anybody else, including me.

Interjections.

Hon. Mr. Elgie: Might I suggest that you shouldn't be satisfied--

Interjections.

Mr. McClellan: Right. This is the subsection that exempts the crown from an application of a special program and from review by the commission. Again, I'm here at the eleventh hour, and you may have had some discussion of why the crown is exempt. You will recall that I had expressed some real pleasure that this section was in there in the first place, and I hadn't noticed at that time that the crown was exempt. Why is the crown exempt, Mr. Minister?

Hon. Mr. Elgie: It was felt that there are and may be a number of initiatives that the crown may wish to undertake--a youth employment program and a variety of other special programs for the



aged and for others--and that it does so deliberately, it does so subject to the Legislature and it should be exempt from any requirement of approval for that program.

Take youth counselling centres, for example, which were recently established: I really can't imagine that you would think it appropriate for us to have to get permission from the human rights commission to establish youth counselling centres. That's just an example--

Mr. McClellan: It is not beyond the realm of possibility or plausibility that a handicapped person might object to the use of directors' permits under the Employment Standards Act to exclude handicapped persons from the protection of the minimum wage laws in the province. We had some discussion of this earlier and, as I understand it, people would have recourse to the commission for review of those kinds of programs. I may have misinterpreted what--

Hon. Mr. Elgie: Do you not believe the definition, "a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity"?

Mr. McClellan: Sorry. Do I what?

Hon. Mr. Elgie: The definition in section 13. Are you reading the old bill, section 14(1), the definition of a special program, which is designed to relieve hardship or economic disadvantage, et cetera?

Mr. McClellan: You're interpreting that in a positive sense.

Hon. Mr. Elgie: Yes.

Mr. McClellan: There is another side to the coin, and I raised that side a number of times in the House and in committees. I intend to continue to raise it and to illustrate some of the problems this set of measures is causing people. We had hoped that the commission would have the capacity to look into both aspects of "special programs," the positive aspects and the negative aspects.

In my view, in Ontario we use special programs to discriminate unfairly against handicapped people. I am referring to the practice of paying people wages on the order of 50 cents an hour for productive employment. I won't get into that whole debate, because this is not the place to do that. The minister knows what I am talking about and is concerned about the problem.

I had hoped that this legislation would provide a means of protection from potential abuses as well as a means of bringing about special programs in a positive sense. But the fact that subsection 5 is here makes it impossible to use it for both purposes, and I think that's a question--

10 p.m.

Hon. Mr. Elgie: I don't quite understand what you are

saying because subsection 2 is what the commissioner may do. Oh, I guess that is right. In any event, do you not feel that the definition of a special program is pretty well set out there Ross? If you are talking about discrimination against the handicapped or the ground of let us say a service or whatever it is, aren't we back then to section 1 of the act, equal treatment with respect to services? What we are dealing with here is affirmative action programs and for instance, personnel policies that may have built in discriminatory practices and so forth.

Mr. Riddell: What is your argument for not having the government subject to the same scrutiny as everybody else?

Hon. Mr. Elgie: I think that the government clearly is going to be involved in a variety of programs that are discriminatory. For example, free OHIP for senior citizens is a discriminatory program. The youth counselling centres extending only to youth up to age 24 is clearly a discriminatory program based upon the assessment of employment in society. Free OHIP, the other case, is based on the needs of the senior citizens. It is our view that those programs should not be subject to review by a human rights commission.

Ms. Copps: Could I just say that I believe the point the minister is making is covered under section 13(1) under special programs. A special program is allowed under section 13(1). What section 13(2) seems to say is that the commission may either upon its own initiative or upon someone's request look into special programs they have not set up, either at a place of employment or potentially in government. They may declare or find that the special program does not satisfy the economic disadvantage or hardship et cetera, as set out in section 13(1).

I would think that generally speaking, the Ontario Human Rights Commission would be hard put to make a finding against the government, but I think that the notion raised by Mr. McClellan that the possibility of a negative application should exist is a good safeguard. I think if we are having a commission that has the authority to go and take a look at programs that have been set up in private business, it would be rather hypocritical of us to say that they can go into private businesses, but they cannot go and take a look at programs set up within the government.

Presumably, if they follow the guidelines set out in section 13(1), there would be no problem and therefore you would really have nothing to fear. I think the notion of having the government subject to the same regulatory requirements as everyone else is a good notion. I think the concern about having special programs is covered under section 13(1) and really that section should in fact be deleted.

Hon. Mr. Elgie: Mr. Chairman, I just want to say that the government finds it very difficult to believe that what we are saying under section 2(e) is that a human rights commission can modify a government's special program. It really is, and we cannot accept that.

Ms. Copps: Just a minute. If you are expecting that the

human rights commission can modify a special program as set up in private industry, why is government set apart from that kind of right or responsibility to the commission? You are saying they can go into private industry and rectify or change a special program which has been set up, but not in government.

Hon. Mr. Elgie: The government can do many things, including exempting legislation from the Human Rights Code, which has primacy. In any piece of legislation, they can say notwithstanding the Human Rights Code, and can deliberately set out to do things that are discriminatory.

Similarly, it should have that right in a number of special programs that are aimed at assisting those who are economically disadvantaged and not have them subject to review, nor indeed subject to recommendations that they be modified. Otherwise they cannot be implemented. I find that untenable.

Mr. Renwick: Mr. Chairman, there are a number of implications to this. Let me for a moment forget the government program in the sense we know it is implemented by various ministries in the public sector. Let me set those aside and talk simply about a special program of the government with respect to employment within the government: That is, the advancement of women in the civil service to senior executive roles.

As I take it, that particular program would be exempt from any review, and I do not think it should be. As I say, I am not talking about a public program, I am talking about an internal government program to advance women in the senior branches of the civil service.

Hon. Mr. Elgie.: That is subject to public review almost every day in estimates and in the Legislature. There is no private sector special program that is subject to the kind of review that a government special program would be vis-à-vis its own employees.

Mr. Renwick: I may not be around the Legislature as much as I should be, but we do not have any avenue in the pressure of business around here to investigate any special program within the civil service. I do not see any reason why the human rights commission should not be entitled, on its own initiative, upon application, or upon a complaint, to inquire into that program and see whether the program is adequate, or not adequate. I think that is quite a different question from public programs.

Hon. Mr. Elgie: I have nothing to add. I just find it a little bit contradictory to think of one emanation of the crown evaluating programs introduced by other emanations of the crown. I just feel that the government, subject to public scrutiny as it is, in committee, and in the Legislature--

Mr. Riddell: Like in Suncor.

Hon. Mr. Elgie: Your associate told me the federal government just finished buying 50 per cent of Suncor.

Ms. Copps: That is a joke. Not true.



Hon. Mr. Elgie: Oh, sure.

Mr. Riddell: She was being a little facetious.

Hon. Mr. Elgie: I took it seriously, and we want the compendium right away.

Mr. Riddell: That is wishful thinking, Bob.

Hon. Mr. Elgie: You know my views on it and maybe some of my colleagues have some comments.

Mr. Eaton: They are so financially bankrupt, they could not afford it.

Mr. Brandt: Mr. Chairman, if I might, I see a very clear distinction between the private sector operating as it does in a much more closed fashion, and government, which is on a daily basis subject to scrutiny, and that is the reason for the code in the first place.

In the instance of government programs, quite often, in my short time here in the House, questions have been raised with respect to the ratios of females in management positions within the government, and that kind of thing, and I think that is the safety valve that you are really looking for. Frankly, I do not see any rationale for having it in the code.

Mr. G. I. Miller: I think there are two different classifications. One of them is for the public and one is for the government. There is nothing to be afraid of if it is implemented. I think you just go by the legislation that is laid down.

Mr. Brandt: Mr. Chairman, recognizing all those arguments, as the minister said earlier, the only thing the government would have to do is to pass legislation where it would get itself out from under any of the encumbrances of this particular code, and free itself from the kinds of restrictions that you are attempting to build in. It could quite easily do that, could it not at any given time?

Hon. Mr. Elgie: Yes.

Mr. Brandt: That being given in the situation, what is the point of building something into the code that could be modified or altered or embellished in some way by the Legislature at some future point. The argument that we are setting up two different approaches to the thing, and we are treating government entirely different than we are the private sector, I do not think holds true. This government is in the business of doing things differently from the private sector for reasons that those initiatives are deemed to be desirable by the Legislature, as a whole.

10:10 p.m.

Ms. Copps: One last intervention, short and sweet: Because the member brought up the issue of ratio of women to men, I

might just point out for his benefit that, even with the great public scrutiny we undergo in the Legislature, the ratio of women to men earning under \$15,000 a year has tripled in the last three years. It is for that very reason we should have the exclusion of subsection 5.

The Vice-Chairman: I think we have had adequate discussion.

Mr. Riddell: If we could always be assured a minority government, we would not worry about it. With a majority government situation, we have simply got to exclude them.

Hon. Mr. Elgie: We have offered a minority government to Prime Minister Trudeau, but he will not accept.

Ms. Copps: Coalition.

Interjection.

Hon. Mr. Elgie: The last time you were in power, Jack, you offered to turn over the premiership to Earl Rowe. Goodness gracious. Do you remember those days?

The Vice-Chairman: The amendment in front of us is to delete subsection 5. Those in favour of the amendment? Those opposed?

Motion negatived.

Section 13, as renumbered and amended, agreed to.

On section 14, as renumbered:

Mr. Havrot: Mr. Chairman, I moved that section earlier.

The Vice-Chairman: That has already been moved.

Motion agreed to.

On section 15:

The Vice-Chairman: Mr. Havrot moves that section 15 of the bill be struck out and the following substituted therefor:

(1) A right under part I to nondiscrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.

(2) A right under part I to nondiscrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.

(3) A right under part I to nondiscrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions".

Hon. Mr. Elgis: This section was really introduced because, with the addition of citizenship as a prohibitive ground of discrimination, certain situations that exist and should be allowed to continue to exist confronted us. There are certain statutes that set up Canadian citizenship as a requirement and we felt those should remain.

The multicultural council spoke in its brief to the issue of making certain those who were landed immigrants should have certain rights to participate in a variety of cultural, educational, trade union and other events. You will recall in my opening statement I indicated there had been some desire expressed on the part of some businesses that have strong pro-Canadian feelings that their senior executive positions should be held by Canadians and therefore that subsection 3 was added.

The change in wording to the word "domicile" was put in because that implies, not only residence in this country but evidence of an intention to remain indefinitely in this country. The third qualification is there be an intention to obtain Canadian citizenship. I see that as supporting the desires of some enterprises to encourage Canadian activity in senior executive positions in the country.

Mr. Brandt: That section now adequately covers the concerns that were raised by the Ontario Association of Chiefs of Police, does it not?

Hon. Mr. Elgie: Subsection 1.

Mr. Riddell: There have been people who have expressed the view Canadian citizens should be given first right, so to speak, in employment or whatever. The example some of them used would be similar to what happens when a boatload of Cuban people suddenly ends up in Florida. What they are saying is, "Are you telling us now that, if the same thing happened in Canada, they should have equal treatment to accommodation and employment as a Canadian citizen or citizen who has been living in this country all his life?"

I am not saying I agree with that. Both Ms. Copps and I have received calls on this very thing. They are questioning whether people who suddenly land in this country should have the same rights as a person who has been a citizen all his or her life.

Hon. Mr. Elgie: You would get as many answers to that question as there are people in a room. My own view is that someone who has achieved the status of a landed immigrant, for the purposes of subsection 2, and a person who is domiciled here should have the same right. They have made their commitment to this country. They have pulled up their roots as our forefathers did. Not to give them



the same rights in the areas we are talking about here, I would find inappropriate.

Ms. Copps: For the record, the information Mr. Riddell talked about was a letter published in the Intelligencer of Belleville by the president of the Progressive Conservative association in Napanee when he cast some doubts on the credibility of the human rights commissioners who came from other countries and did not have the right to tell us what to do with our country.

Hon. Mr. Elgie: I got great solace out of the fact the Liberal riding association in Frontenac supported Bill 7 in its contents. That gave me a certain feeling of something. I am not sure what.

Mr. Riddell: Apart from politics, I was not necessarily referring to that.

Hon Mr. Elgie: I did not think Sheila was getting into politics there either, Jack. I thought it was gratuitous flamboyance.

Mr. Riddell: The person who did call me on that very matter--I asked him to speak to you as well.

Mr. Renwick: I have somewhat the same concern Mr. Riddell has raised. I do not understand why the minister has limited subsection 3 to organizations or enterprises for the holders of a chief or senior executive position. It seems we could well stop subsection 3 simply after the word "consideration" and drop "adopted by an organization or enterprise for the holder of a chief or senior executive position."

Hon Mr. Elgie: You understand this is permissive. It is not a requirement. It is permitted individual enterprises. We all know people who have great pro-Canadian feelings with regard to senior executive positions and the view they want people with a strong commitment to this country, which goes beyond being prominent landed immigrant--

Mr. Renwick: That is precisely the point I think Mr. Riddell is raising and which was raised here. One should be able to say that the right "to nondiscrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a bona fide requirement, qualification or consideration," period. Just simply say it is quite all right to say to people, "We are going to give a preference to people who are Canadian citizens or landed immigrants, that is, people domiciled in Canada with the intention to obtain Canadian citizenship."

We had the case of the school board across the border--

10:20 p.m.

Ms. Copps: Those are two different things.

Mr. Renwick: Are they?

Ms. Copps: You suggest you would say "citizens or landed immigrants" and then add in "domiciled in Canada with the intention to obtain Canadian citizenship." That is not necessarily a given for a landed immigrant. Obviously, there is a federal government immigration requirement that you be a landed immigrant or a Canadian citizen to have a job or to get a work permit.

Mr. Renwick: Well, a landed immigrant has a status in Canada that is equivalent in technical, legal terms to having a domicile in Canada with the intention to become a citizen, I think.

Hon. Mr. Elgie: Technically, that is not so. You know that.

Ms. Copps: That is a very difficult area because there are many people living in Canada, who are landed immigrants, and who are very contributing members of society.

Mr. Renwick: I am not trying to cut them out.

Ms. Copps: I think that would be the intention of this.

Mr. Renwick: I want to disabuse anybody of any suggestion I am trying to affect landed immigrants. Most landed immigrants, I would say all landed immigrants, are landed immigrants by virtue of the Immigration Act, but are persons of whom you can also say that their domicile is in Canada and that they have intentions of becoming Canadian citizens.

Ms. Copps: No.

Mr. Renwick: All right. Let me go to the term "landed immigrant" then. Why don't we say that a right under part I to nondiscrimination because of citizenship is not infringed where Canadian citizenship or landed immigrant status in Canada is a requirement, qualification or consideration?

Hon. Mr. Elgie: Jim, I think we are talking about minor variations. Let's understand that a landed immigrant need not have fulfilled all the qualifications of domicile. Domicile goes beyond simply being a landed immigrant.

Mr. Renwick: I understand that. It's a totally different concept. Let's forget the domicile.

Hon. Mr. Elgie: We are saying there are some organizations, albeit very few, which have very strong Canadian feelings. If they wish to have senior executive positions held by those who have that same strong commitment to this country, either landed immigrants who have achieved domicile and who have, for the purposes of that company, satisfied it of an intention to become Canadian citizens as soon as they are able, they should have that right. I do not think that is really upsetting anything in society and it is giving those companies with strong feelings that right.

Mr. Renwick: I am not objecting to the clause you have here. I am simply saying that the point that was made to us is that you should be able to state a requirement that a person be either a

Canadian citizen or a landed immigrant without infringing against the provision with respect to citizenship.

Hon. Mr. Elgie: With respect, you cannot discriminate on the basis of citizenship under this code.

Mr. Renwick: That's right. Unless you have a take-out clause.

Hon. Mr. Elgie: Unless you have this take-out. I have to tell you I have some reservations about having X company being able to deprive landed immigrants who may not--

Mr. Renwick: I do not want to deprive landed immigrants. I want to keep landed immigrants in regardless of citizenship. I want to keep Canadian citizens in.

Hon. Mr. Elgie: I do not see where they are out. All we are saying is, where a company wants two additional things, because of its strong Canadian feelings: satisfaction of domicile, which is a well-understood legal term, and some tangible evidence of a commitment to citizenship--

Mr. Renwick: I have no problem with your clause.

Hon. Mr. Elgie:--we prefer to limit it to the senior executive position level so it would not become a widespread hiring pattern.

Mr. Brandt: Mr. Minister, is this not an extension of the very permissiveness that is being requested, as I am reading it?

Hon. Mr. Elgie: As I understood Jim, he was suggesting it should not be limited to holders of chief or senior executive positions. It should be allowed for all employees. Is that not what you are saying? If you wanted to limit it--

Mr. Renwick: I was equating landed immigrant with a domiciled person. Leaving aside subtle distinctions, I think one should be able to say when a position is advertised that the position is open to Canadian citizens or landed immigrants.

Hon. Mr. Elgie: Well, they could not say otherwise. They would have to say that or they would be running contrary to the code, unless they came under this exemption in terms of certain Canadians with very strong feelings about their country. We are saying they should be able to limit senior executives to those who are in the country.

Mr. Renwick: I would be quite happy to have this in as well. If you want to have this additional limitation, that's fine.

The Vice-Chairman: It is very close to 10:30. I suggest we adjourn and we meet again next Tuesday night at eight o'clock.

The committee adjourned at 10:28 p.m.





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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

BILL 7, HUMAN RIGHTS CODE

TUESDAY, NOVEMBER 17, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Also taking part:

Boudria, D. (Prescott-Russel L)  
Brandt, A. (Sarnia PC)  
Cassidy, M. (Ottawa Centre NDP)  
Cooke, D (Windsor-Riverside NDP)  
Kolyn, A. (Lakeshore PC)  
MacKenzie, R. (Hamilton East NDP)  
McClellan, R. (Bellwoods NDP)  
Nixon, R. F. (Brant-Oxford-Norfolk L)  
Piche, R. (Cochrane North PC)  
Renwick, J. A. (Riverdale NDP)  
Roy, A. J. (Ottawa East L)  
Wildman, B. (Algoma NDP)

Clerk: Richardson, A.

Consultant: Stone A. R., Legislative Counsel

Researcher: Madisso, M.

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister  
Elgie, Hon R., Minister  
Hess, P, Director, Legal Branch



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, November 17, 1981

HUMAN RIGHTS CODE  
(continued)

Resuming the adjourned consideration of Bill 7, An Act to revise and extend protection of Human Rights in Ontario.

The committee met at 8:09 p.m. in room No. 228.

Mr. Chairman: I call the meeting to order.

Mr. McClellan: I have a procedural motion with respect to the work of this committee once we have completed Bill 7. If I may I will move it. There are a number of my colleagues who would like to speak briefly to the motion.

Mr. Chairman: Mr. McClellan moves that immediately upon completion of its consideration of Bill 7, this committee take up the matter of the annual report of the Ministry of Labour which stands referred to it.

Mr. McClellan: I believe Mr. Mackenzie wanted to make a few remarks with respect to that.

Mr. Mackenzie: Mr. Chairman, we feel we should be dealing next with the report of the Ministry of Labour because of the deteriorating employment situation in the province. The plant shutdown situation is probably worse now than when we originally set up our select committee to deal with the matter. As the minister knows the committee never had a chance to complete its report to the Legislature.

We feel the questions coming up at any number of plants, as well as some of the specific problems we see at Admiral, are worthy of being dealt with immediately under the minister's report. In the case of Admiral it is a twist I suppose, but it is a question of whether or not the workers have any protection at all in terms of severance pay arrangements. They are supposedly the law of this province, but there are jurisdictional disputes we are told exist between the federal and provincial authorities in terms of what is or is not a bankruptcy or receivership.

The whole question of what is happening to workers in Ontario today alone--I do not know how the reports are coming in to the minister. We have notice of two more plant shutdowns, one total and one coming on December 7. It seems to be almost a daily ritual. The protection from the province for workers is not sufficient. The issue is one we simply have to deal with. We think it important that it be the next item of business and that it not be delayed.

Mr. Cassidy: I cannot second that because I am only a visitor to the committee right now. However, in the last few weeks we have seen the consequences of the federal interest rate policies

with the collapse of Admiral. It went down because of high interest rates--not just because of mismanagement but also corporate rates. It was a decision by the owners--Canadian, I regret to say--that they would strip the company of all its assets and then leave it out to dry. Under the high interest rates they could not survive.

This morning I met with some of the workers at Admiral on Lakeshore Boulevard in Port Credit. They are not guaranteed their severance pay because it ranks behind, rather than ahead of, secured creditors. In lieu of termination notice they should be getting 16 weeks' pay, which would amount to about \$4,000 or \$5,000 for most of the workers. It would at least give them a cushion to look for a job under very difficult conditions as they face winter and 320,000 unemployed in the province. It does not look as though they will get that.

It would appear from my reading of the Employment Standards Act there is a loophole effectively indicating that if the banks or the creditors move on a company the termination notice does not have to be paid. So the workers' claim is not there in case there is any money to pay after the secured creditors, which is probably unlikely. The chances are they will not even have a valid claim at all. It cannot be challenged in the courts because of the loophole written into that section of the Employment Standards Act.

Massey-Ferguson 1,700 jobs; Budd 800 jobs; Shop-rite today, 600 jobs; McDonnell Douglas over the last few months has laid off some 2,200 workers; my colleague from Port Arthur pointed out Can-Car is down to a couple of hundred jobs from more than 1,000 a year or so ago. In Chatham, as I pointed out today, there are any number of companies in the truck and automobile industry down by 25 per cent of their work force. It is happening in every corner of the province.

I believe this committee should once again at least explore and expose what is happening, and look for those solutions that lie within the purview of Ontario. I think this is particularly urgent because we were stonewalled by the government in the Legislature over this issue in the last couple of weeks. I was really distressed at the indication the Minister of Labour seems to put the interest of the bank ahead of the interest of the workers he is meant to protect.

Mr. Eaton:: Oh, my gracious.

Mr. Cassidy: The member for Middlesex (Mr. Eaton) resents that, but the Employment Standards Act leaves a loophole under which the banks can creep in and get their claims paid before the worker's right to termination pay, which would otherwise have precedence. This is not a matter that will--

Mr. Eaton: It is not a case of the Minister of Labour putting the banks before the workers. The act is written that way federally. Do not twist things.

Mr. Cassidy: No, it is not a federal act. I am not twisting anything at all. Is the Employment Standards Act a federal act?

Mr. Eaton: No, but the Bank Act overrules it.

Mr. Cassidy: Okay. The Employment Standards Act is a provincial act, and we have the power to change it here in the Legislature. I am suggesting that loophole in the Employment Standards Act should be plugged up. As the situation stands now it is an open incentive for a company that appears to be in trouble to go to their banker and say, "If you guys call your loans rather than leaving us to declare receivership, it is going to save us having to pay out several millions of dollars in termination pay or pay in lieu of termination to the workers." So there is an incentive to management to do just that and get into collusion with the banks.

On the other hand there is an incentive for the banks to say: "That company is having some trouble. We had better move in quickly, because if we move in now and call our loans, then we can get in there before the workers get their termination pay." I think that is a very unhealthy situation. But if you think it is right the banks should have precedence, that is fine.

Mr. Eaton: There you are twisting again.

Mr. Cassidy: I'm not twisting at all.

Mr. Chairman: Mr. Eaton, you will have an opportunity to speak if you wish.

Mr. Cassidy: That is what your government is saying, because there is no commitment at all. The Minister of Labour can deny it, but there is no commitment to change the legislation in order to do what we can at the provincial level. We have had ministers of labour, according to Mr. Elgie, since 1975 knocking in vain on the door of the federal government trying to get some change. We now have a federal report, published yesterday, saying we are right--there is a problem there and something ought to be done. The right of workers to their wages in lieu of termination should be respected.

If the federal government is saying that, surely the least we can do is to act now at the Ontario level. For all its weaknesses, at least we embarked on the principle of severance pay a few months ago with legislation in this House. It seems to me we can show a lead in this area as well. We have half the industry in the country here in the province. It is a well-accepted principle of many other jurisdictions outside North America. Surely we should say that workers come ahead of banks. That is why I think this question and the question of these layoffs should be considered in this committee as soon as it has completed its hearings on Bill 7.

Mr. Cooke: Mr. Chairman, the discussions that have taken place in the House over the last few weeks about the number of layoffs point to the incredible urgency of the item being discussed before this committee. We did have the plant shutdowns committee, which was terminated when the election was called and was never reconvened by the government. Since then we have had more massive layoffs at Massey, we have had the Canadian Admiral situation, we



have had further massive layoffs at McDonnell Douglas, which was one of the companies we looked at briefly in the plant shutdowns committee, we have International Harvester in Chatham and dozens of auto parts firms in Chatham. These last have resulted in a depression in Chatham comparable to the depression that exists in my home town of Windsor.

Budd Automotive again is a company whose very future is threatened because of the large facilities it has, the large number of layoffs and the question of whether continuing at all is economical. The reason General Motors is where it is now, contrary to what the provincial Treasurer said today, is because it decided to source its frames and auto parts from an American firm that negotiated wage concessions with its employees, instead of from Budd Automotive. In other words, General Motors was in the game of playing American workers against Canadian workers. That is a very serious problem in the auto industry that has to be looked at.

We have to look at alternatives to that. One of the serious alternatives that has to be considered by this government to recommend to the federal government is content legislation in the auto industry. De Havilland has major layoffs, all sort of layoffs. If interest rates continue the way they are Canadian Admiral will seem like a small disaster compared to what is going to happen with Chrysler Corporation and perhaps with Ford. We see the community effects, which we got into to some extent in the plant shutdowns committee, but not anywhere to the degree we need. I have a student working in my office in Windsor right now. She is pulling together some figures on the cost of unemployment in that city. The preliminary figures would indicate we are talking about a cost to the taxpayers of more than a billion dollars in 1981 due to unemployment in Windsor alone.

I hope all members of this committee will take a very serious look, in a nonpartisan way, at whether this whole issue should be debated. We may come to different conclusions as to the direction in which government should be going in order to create employment and to avoid the very serious recession we are now heading into. None the less it is a very important matter. Unemployment is the most important issue facing Ontario and Canada right now and its consequences for people and families and the future of this province.

8:20 p.m.

I hope we will be able to get into it. I hope we will be able to discuss an industrial strategy for the province so that we are not always talking about negatives, so that we are not always talking about picking up the pieces. I hope we could be talking about creating jobs and creating wealth for the people of this province.

Mr. J. M. Johnson: Mr. Chairman, on a point of order, I'd like to bring something up for the consideration of the committee. It is my understanding the Minister of Labour's estimates were referred to the standing committee on social development and that they should be starting around December 1. We are going to take another three, four or five sessions on this bill. We won't be

through much before that time. I don't think you want to refer the Labour estimates back to this committee, because of the work load. Would it not be more appropriate to see them come on stream on December 1?

Mr. Cooke: I think you understand the concern we have, that it is about time a committee of the Legislature looks at the problems and writes a report that can be debated and reviewed by the people of this province. You cannot do that in estimates. You cannot talk about specific layoffs and have people, workers and their representatives in the labour unions and company officials come before an estimates committee. The estimates committee is completely unacceptable for debating a problem that has incredible importance for this province.

Mr. J. M. Johnson: Then what you are really doing is taking it away from the social development committee as well.

Mr. Cassidy: No, we are not.

Mr. J.M. Johnson: The Minister of Labour cannot be in attendance in this committee and also at estimates in another committee.

Mr. Cooke: I'm sure the House leaders in their wisdom at an 11 o'clock meeting on a Thursday morning--

Mr. J. M. Johnson: If the House leaders decide the business of the committees. It is my understanding the committees decide the business they want to handle.

Mr. Wildman: That all depends on which committee--

Mr. Cassidy: With respect, I am not sure whether the committees have a conflict in terms of when they meet, but I know my colleague Bob MacKenzie, for example, has been waiting to raise a number of things under those Labour estimates for some time now. They relate to health and safety in the work place, to the position of women and equal pay, to a whole number of other issues that have got to be raised. Those are important too.

But what we are saying is that the question of galloping unemployment, which is really amounting to a depression in manufacturing industries in large parts of this province now, has got to have a focus. That is why we have referred the Minister of Labour--not just to have an hour or two of discussion during the course of the Minister of Labour's estimates, but to focus on it the way we focused on the question of shutdowns a year ago at this time and then passed that on to committee. I hope you agree that is necessary now and that we are facing a serious crisis, because that is affecting every corner of the province.

Ms. Copps: If that is the intention of the committee, possibly we should entertain an amendment to the motion. The amendment should read that we should reconstitute the select committee on plant shutdowns. There will be 20 hours in estimates, and I know the issue that has been raised before this committee is of paramount importance. The other issue we are taking time from

right now, Bill 7, is also of paramount importance. If the ultimate intention of the restructuring of the committee to hear the annual report is to strike a select committee on plant shutdowns, maybe that is what we should be taking a look at. I would be prepared to move--

Mr. Cooke: This committee has no authority to instruct the government to strike a select committee. This is the only way we can get at this problem as members of the Legislature and write a report.

Ms. Copps: I would have no objection to supporting the NDP motion. I think what we should do is deal with this matter as expeditiously as possible so that we can get on with the discussion of Bill 7, which is what we are here for tonight. And there are many other people who are here for that. So I would be prepared to support the motion to refer the annual report to this committee immediately following the resolution of Bill 7.

From a timing point of view, I think the honourable member is correct when he says we are going to find ourselves in a situation of having the Ministry of Labour estimates occurring concurrently with the reconstitution of this committee. But if the House leaders and the committee members are able to work out a solution in terms of timing I am sure we would have no problem with that.

Hon. Mr. Elgie: Mr. Chairman, let me make my comments here. First of all, I reject the statement the government is not concerned about any of this. I spend a great deal of my time not only meeting with people but trying to deal with these issues as effectively as one can do. I reject out of hand the concept that the government is not involved or interested in these problems. I have repeated my views on the issues in the House many times, and there is no unwillingness to answer questions about those issues in the House.

This is a motion referring a Ministry of Labour annual report for such consideration of the report as the committee may determine. That report will be before the standing committee on social development on December 1. It is my view this motion should be heard by that committee at that time. Then it may determine what time would be allocated and so forth, if it agrees to do so, to a specific consideration of matters other than those matters that are ordinarily considered in estimates. I would suggest, Mr. Chairman, that is the position of the government on this issue.

Mr. McClellan: There seems to be some misunderstanding as to whether the annual report is actually before the social development committee on December 1. Our understanding was that the estimates of the Ministry of Labour will be in social development once the Ministry of Health estimates are completed. As I understand it, we don't have a time or a slot for the debate on the annual report, and what we are trying to do with this motion is to establish that the annual report of the Ministry of Labour is the matter of priority we would like to deal with first, which is why we are moving it here in this committee.

Hon. Mr. Elgie: That committee may so order its work to



consider the annual report if it wishes, and for whatever time it allocates it, and that is the position we still take on this.

Mr. Cooke: How can the social development committee deal with an annual report that is not before it?

Hon. Mr. Elgie: You can refer it down to that committee.

Mr. Cooke: The annual report was referred here by 20 members of our caucus. If Mr. Johnson is concerned about a conflict with the Labour estimates, does he have a position he is willing to put forward as to when it will not be a conflict and when his caucus would be prepared to consider the annual report of the Ministry of Labour so that we can go into the matters we have raised? I am sure he agrees they are very important matters. Is he willing to suggest a time when we could deal with that in this committee?

Hon. Mr. Elgie: Mr. Chairman, I have made my suggestion. If the member is seriously interested in the problem--and I suspect he is--then he should refer this report to that committee at the time of those estimates so that the committee may then arrange its time, if it so desires, and set aside some time to consider this report.

Mr. Cooke: In other words, so that Mr. Johnson could not answer you on it, you intervened to give your position.

Mr. J.M. Johnson: I don't think that is quite accurate. I would think your suggestion that the House leaders discuss it on Thursday, if they can do so--this committee meets again Thursday night. We are not going to deal with it before next week.

Mr. Cooke: You know the position of the House leaders.

Interjections.

Mr. Chairman: I am not particularly interested in what either you or Mr. Johnson say unless it pertains to the resolution. If you want to speak to the resolution fine: if you wish to talk to Mr. Johnson you people can do that at some other time.

Mr. Cassidy: With respect, I am not sure what Mr. Johnson is saying. Last week, in this room or downstairs, I was in the general government committee. We went through exactly the same kind of questions with respect to the Suncor matter and it was referred to the House leaders, and a week later, it was bounced straight back. Unless it is a means whereby the Conservative group in the committee seeks instructions by referring it back to the House leaders, then it is just a means of delaying action. I am not sure what the purpose is. Surely the committee can make the decision whether this is an important enough issue to merit study or not. We say it is.

Mr. Wildman: I participated in that same debate in the general government committee, at which time the majority on the committee voted that the matter of determining the order of business for the committee be referred to the House leaders, which

I seem to get from this discussion as well. My understanding is that the House leaders, led by Mr. Wells, stated in response to that it is up to a committee to order its own business, and that the House leaders did not wish to get into the ordering of business for committees. All that is being suggested here is that we have ordered the business that is before this committee already. It is before the committee. The question is what order it is going to take when the committee starts hearing it.

Mr. Chairman: Any further discussion on this resolution? All in favour of the amendment? Opposed?

Motion negatived.

8:30 p.m.

On section 16:

Hon. Mr. Elgie: Mr. Chairman, may I just interject to Ms. Copps' recent questions about the definition of group insurance. We have had considerable discussion about that and I think you have some proposed amendments about it. But I wonder if you would mind if we dealt with that when we reach section 21 because they are intimately tied together. We could proceed with section 16 in the meantime.

Mr. Renwick, I wonder if you would mind if we still stood by that other matter for awhile. We are still looking at the issue you raised last week.

Mr. Renwick: Yes. I am glad you are still looking into it. I will certainly be pleased to discuss it with you, informally of course.

Hon. Mr. Elgie: I think that might be of value because I know the strong views you had against the previous section as it was worded.

Mr. Renwick: I have strong views both ways. I want it to be reasonable and appropriate.

Hon. Mr. Elgie: It is a difficult problem.

Mr. Chairman: Is it agreed then that the items stood down will remain stood down? That's fine then.

I was away the last meeting, and I understand section 15 has been completed and we are on section 16.

Mr. J. M. Johnson: Yes, on section 16, Mr. Chairman.

Mr. Chairman: Mr. J.M. Johnson moves that section 16 of Bill 7 be struck out and the following substituted therefor:

16(1) A right under this act is not infringed for the reason only that (a) access to premises, services, goods, facilities, accommodation, is obstructed or the premises serves its goods, facilities, accommodation lack the appropriate amenities for the

person because of handicap; (b) the essential duties are necessary requirements attending the exercise or they are either incapable of being performed or propelled by the person because of handicap.

16(2) Where in an investigation of the complaint made under section 31 it appears to the commission that an exclusion or qualification is made only for a reason under subsection 1, the commission may endeavour to effect a settlement under section 32 but shall not request the minister to appoint a board of inquiry.

Hon. Mr. Elgie: Mr. Chairman, this amendment really is in line with the position we have taken all along, including the time of second reading of Bill 209. That position really was that lack of access or amenities, et cetera, on their own, are not in this bill considered to be discrimination per se.

On reflection, although we had originally thought the remedial section, section 40, clearly said it was our view, it should be clearly stated under the offences and exemptions sections. Then there would be no doubt the intention that has been clearly stated all along is so preserved in appropriate language.

Subsection 2 also clearly asserts in indefinite terms what I said last week to this committee. That was that the issues of access or amenities, et cetera, alone may nevertheless be a matter the commission accepts as a complaint for investigation and conciliation. It clarifies the position I stated last week and reaffirms the position we have had on the books for some time in this area.

Mr. McClellan: It is difficult to comment on something that is this fresh, but my initial reaction to section 16(1)(a) is that you have simply entrenched your refusal to accept "reasonable accommodation" and spell it out.

Hon. Mr. Elgie: That's right. On reflection, I think it should be spelled out in the offences and exemptions sections and not just listed under the remedial section as a bar to a board of inquiry.

Mr. McClellan: That is what I thought you were doing. You are saying explicitly that "reasonable accommodation" is not to be taken into consideration, and you are defining what you mean by that. I again say that means the act's effectiveness is going to be severely limited with respect to handicapped people.

I made the argument the other night, and I do not need to repeat it in detail, that if a disabled person cannot even get to the personnel office to apply for a job because the personnel office is not wheelchair accessible, or if the person cannot get into the shop floor because the doorway is too narrow to accommodate a wheelchair or there are no ramps on the building, all of this nice legislation is utterly meaningless. I think it is really a regressive move that the minister is putting forward.

I believe there is an opportunity here to do some of the things that the minister and I have talked about in other forums, to use this bill quite deliberately to break job slots free for



handicapped people. There is an opportunity to do it under this bill, and I think it is an appropriate way to do it. There are other ways to do it, or we can do nothing. We can try voluntary compliance, which is basically what the government is doing. We can impose quotas, as many European countries have done. Or we can use our human rights legislation and rely on all of the resources and backup of the human rights commission.

We are not just talking about some magic quota legislation; we are also talking about the sensitive resources of staff and all of the programs of the commission to make sure that these kinds of things--

Mr. Eaton: On a point of privilege, Mr. Chairman: If Mr. Cooke wants to give a story to the reporter, could they step outside and do it? We cannot hear everything that is being said over here. Oh, I guess he stepped out anyway.

Mr. McClellan: I think he's gone.

Mr. Chairman: He must have been anticipating your uneasiness, Mr. Eaton.

Hon. Mr. Elgie: He could sense your ire rising.

Mr. Eaton: I can see that the member couldn't hear what was being said either.

Mr. McClellan: I could hear.

Mr. Eaton: Didn't you feel you were talking to yourself?

Mr. McClellan: I do feel that I am talking to myself, and I think that is regrettable, because the minister knows there is an opportunity here and it is being missed. That is all I want to say at this point.

Mr. Copps: Mr. Chairman, I have a couple of legal questions.

First, what is the minister's definition of obstruction?

Hon. Mr. Elgie: Mr. Hess, do you want to comment on that?

Mr. Hess: An obstruction? I guess it means inaccessible.

Ms. Copps: I do not think it means inaccessible. I think the potential of using that word "obstructed" is very dangerous. A body could be obstructing a doorway, and I do not think that is reasonable grounds for lack of reasonable accommodation.

I have a question about the use of the word "obstructed." I also have a question about the definition of "necessary requirements attending the exercise of the right."

I also have a question about the specification under section 16(1) that there will be no board of inquiry. Does that mean that under the whole of subsection 1 there would not be a board of

inquiry?

In a case where the condition of an essential duty is at stake, there may be differing opinions as to the essential duties surrounding a job, and the notion that you cannot call a board of inquiry would mean you would never actually be able to have two interpretations of what are the essential duties or necessary requirements attending the exercise of a right.

The fact that you are excluding a board of inquiry in the interpretation of essential duties is rather critical, I would think.

8:40 p.m.

Hon. Mr. Elgie: What we are trying to say is that if a person can carry out the essential duties, then clearly they don't come under the exemption of this section. That is my understanding of it. Mr. Hess?

Mr. Hess: Yes.

Ms. Copps: You have extended it a little bit, because you have used the words "essential duties or necessary requirements."

Hon. Mr. Elgie: Well, there are some things that are not duties. For instance, if one lived in an apartment building in accommodation that is accessible, what are the necessary requirements of living there? That would not be a matter to be determined by the commission. And if there were a determination that those requirements could be lived up to, then it would be a matter they could refer under a board. If not, they would have to deal with it by conciliation.

Ms. Copps: But I suspect that in using the definition of essential duties, you are referring primarily to the employment market.

Hon. Mr. Elgie: Yes, that is right, and "necessary requirements" applies to other settings.

Ms. Copps: I have some concerns over the fact that we have not defined "necessary requirements" in the act. "Necessary requirements" could be interpreted in the broad spectrum in a court situation.

Likewise, I reiterate concerns over the word "obstructed," because obstructed to me in simple English means something is blocking the entrance. There is no notion of physical accessibility built into notion of obstruction. Theoretically, if a person were standing--

Mr. Hess: I believe the word "obstructed" is qualified by "for the person because of the handicap." So it depends on the handicap as to whether there is obstruction.

Ms. Copps: It says "access to premises, services, goods, facilities or accommodation is obstructed, or the premises,

services, goods, facilities or accommodation lack the appropriate amenities for the person because of the handicap."

I would interpret "for the person because of the handicap" as referring to the notion of "premises, services, goods, facilities or accommodation." I do not think the notion of obstruction is very clearly spelled out in that particular section.

Obviously I would have some question about the spirit of the legislation also. But, in strict legal terms, "obstructed" in and of itself denotes a number of notions, one of which could be accessibility; but it could mean anything else from the fact that someone is standing in the doorway obstructing you to any other notion.

Mr. Hess: It was never intended to apply to a truck that was, for example, blocking the entrance. With respect, I suggest it is all qualified by the concluding phrase "for the person because of the handicap." That is what we are talking about.

Ms. Copps: I suggest that what it is meant to mean is not what it means. It should be spelled out very clearly there if you intend to refer specifically to the issue of physical accessibility. When we go to the courts for an interpretation, they are not going to understand what it was meant to mean but what it actually says.

Hon. Mr. Elgie: After lengthy discussion with legislative counsel, my own counsel, I submit that the "or" in that phrase definitely ties "obstructed" to both portions of that section and that the meaning would not be subject to any judicial difficulty.

Ms. Copps: I submit that the legal wording should preferably be "and" and not "or."

Hon. Mr. Elgie: When they are both tied together, they all have to be together. This is a disjunctive.

Ms. Copps: I know that you are concerned about having this notion of reasonable accommodation deleted from the act, and although I do not agree with it--

Hon. Mr. Elgie: It never was in the act. It isn't a matter of deleting it.

Ms. Copps: We may not think it was in the act. The public at large certainly holds a lot more hope for this bill than what has actually materialized. Nevertheless, not wanting to get at this moment into a spiritual or philosophical discussion of "reasonable accommodation," I think the wording is somewhat ambiguous. If you insist on pushing it through as is, you may find from a court point of view that it will not hold up.

Likewise, in clause (b), I have some questions about "necessary requirements" and the fact that under subsection 2 the question of "essential duties" can never be brought to a board of inquiry. That is what you are stating under subsection 2.



Mr. Hess: If it appeared to the commission that was the only reason for the exclusion or disqualification, my answer to you would have to be yes.

Ms. Copps: I would counter by saying that in the issue of physical accessibility you are obviously dealing with a given, even though I think "obstructed" in and of itself is confusing. If you did specify the notion of physical accessibility, that would be a decision very easily made by the commission.

On an issue of "essential duties," for example, there could very well be two different points of view, which the commission would have to resolve through a board of inquiry. By cutting off the possibility of a board of inquiry, under any part of subsection 1(a) or (b), you are thus eliminating any question as to what the essential duties are.

You may find yourself in the curious situation where some commissioners feel that a particular area is part of the essential duties attending a job, and others might take the position that it is a peripheral duty, which presumably would be resolved in the convening of a board of inquiry. But you are cutting off that possibility with section 16(2).

Mr. Hess: No, not in those circumstances. If it were not apparent to the commission that the only reason was that the essential duties were incapable of being performed, then I would have to disagree and say that could go on to a board of inquiry for final determination if there were some doubt about the matter.

Ms. Copps: You may have a split decision at the commission level, for example. Presumably you have more than one commissioner on the commission, and you may have a split decision on an issue specifically dealing with "essential duties."

I can certainly understand how physical amenities are something that are very easy to determine one way or the other, but on the issue of "essential duties" there can be situations that would arise where one person might be of the opinion that it was an essential duty and the other would be of the opinion that it was not.

You might have a split decision on the commission, with perhaps a majority viewpoint being that section 16(1)(b) had not been violated and a minority point of view saying that section 16(1)(b) had been violated. In that case, there should be an option to convene a board of inquiry.

Hon. Mr. Elgie: I am sure the issue of a split decision faces the commission on every issue before them, but they inevitably are able to reach a decision. It is a question that faces everybody who has to make that kind of decision, Ms. Copps. They face that with every complaint before them.

Ms. Copps: But if you build into the legislation the notion that a violation under subsection 1 cannot go to a board of inquiry, I believe you are setting the thing in stone. In fact, there should be a little more leverage left to the discretion of

the commission, particularly on the issue of essential duties. On the issue of clause (a), if you fine-tuned your wording on accessibility, there is obviously no question. But on clause (b), you are going to find many questions.

Hon. Mr. Elgie: Both counsel assure me that they do not see the problem you have highlighted as being one that is inherent in this draft the way it is before you, Ms. Copps.

Ms. Copps: Can you not see under section 16(2) that you could potentially be cutting off the board of inquiry possibility for people who have questions about the essential duties of a job, which is going to be one of the very crucial elements for the disabled in this legislation?

If they have no recourse on the issue of "essential duties," then effectively the whole notion of changing the legislation has been for nought, because essential duties attending a job are certainly going to be put up to a great degree of controversy and litigation in a number of instances. By setting in stone the fact that you cannot take an exclusion qualification under subsection 1--

Hon. Mr. Elgie: I guess what you are asking is, can "essential duties and necessary requirements" be a matter of dispute that can go before a board?"

Ms. Copps: I think they could. I think in a lot of instances they could.

Hon. Mr. Elgie: Mr. Hess, are you saying that they can or cannot go?

8:50 p.m.

Mr. Hess: I think if there were a real difficulty about the matter as to whether they were essential duties or necessary requirements, if there were a real dispute about it, it would wind up before a board of inquiry in any event.

Ms. Copps: But I suggest, with all respect, that you are eliminating that possibility under subsection 2.

Mr. Hess: No, not in my view. I appreciate what you have said. I think the commission has been given a lot of duties under this legislation. This happens to be one more of them. I think it has to exercise them properly. It cannot just do it by whim or fancy, or why have a commission? Why not let it all go before a board directly?

Ms. Copps: With respect, Mr. Hess, I am simply reading the legislation that is here before me and not the role of a commission or anything else.

In the legislation it specifically states in section 16(2), "Where in the investigation of a complaint made under section 31 it appears to the commission that an exclusion or qualification is made only for a reason under subsection 1"--which would include the essential duties--"the commission...shall not request the minister

to appoint a board of inquiry." That is what it says. By the inclusion of that section, what you will be doing is cutting off any debate or question on the issue of "essential duties."

Hon. Mr. Elgie: I had thought that if there were a debate over what the essential duties were, it would be a matter that could have gone to a board.

Ms. Copps: Not from my reading of subsection 2.

Hon. Mr. Elgie: Can counsel chat about it for a few minutes? We will put this aside for a few minutes and we can come back to it.

Mr. Chairman: Is there any difficulty with setting this aside? I just wonder, Mr. Renwick if you wish to speak on it, the consensus seems to be to set it down. Is there anything you wish to add before that?

Mr. Renwick: I would appreciate it, because while I appreciate the thrust of what Ms. Copps is saying, and if our argument is reduced to that ground, I would certainly support her argument.

What comes across to me is an immense turnaround by the minister. It bothers me very much.

Hon. Mr. Elgie: There is no turnaround here.

Mr. Renwick: I am not trying to be rhetorical or anything. What I saw in the present section 16, with all of the problems related to the term "essential duties," was that at least there was an avenue open for a person with a handicap to meet a test which was objective and could be met.

I do not know what the pressures were on the ministry about this particular amendment, but it seems to me now that they have made that access immensely difficult because they have added the whole question of access to the test which is required to enable the people who have a handicap to meet the requirement.

All my life I have had trouble with negatives. I am a positive, optimistic person rather than an negative, pessimistic person; so negatives are always difficult for me. As I understand it, not only have you have added the handicap of "essential duties," which we could have talked about and expanded as being to a reasonable cause, but you have also added to it now the handicap that there is no discrimination if you cannot get into the place.

That surely has been, in the public's perception, the major thrust of what handicapped people should have. What they should have in the public's view is, first of all, access. This seems to me to reintroduce that barrier. If I am reading the proposed amendment correctly, I would urge the minister to withdraw it and talk in the more positive sense about the existing section 16. Then we can talk about the handicapped and essential duties and talk in a very positive sense about the meanings of those phrases. But what you have now added is a separate barrier.



It is not only the question of essential duties. If we were to accept this amendment, you could have a person under this bill who could perform the essential duties but who would be excluded because he or she could not get to the place. I think that is an immensely regressive step, and I am really frightened about this kind of withdrawal in an area where I know the minister is very empathetic to the needs of handicapped people.

I stress what I say. If we have to fight it on the lower ground, I adopt what Ms. Copps has said and would like to speak to that argument. But this poses the immensely immediate difficult problem: If you ask the public what they are thinking about with respect to handicapped people, the visible part of it is the accessibility question. Now to allow someone to deny a job to a person with a handicap because there is no access to the premises seems to me to be a real step backwards. I urge not only that the section be stood down on that ground but also that you seriously consider whether I am right, and in this committee I am never sure that I understand what the words mean.

The second point I want to make is that we did eliminate the actual words defining the term "discrimination" the other night, and I personally think that was an immense improvement in the bill. You leave an English word to have an English meaning in the sense of what it tends to connote, and we did that. Yet in subsection 2 of this amendment you have picked up the language we deleted from that, the words "an exclusion or qualification," which were words that came out of a definition we deleted from the bill the other night.

The third thing I want to say is that even as written in the bill, that is, without this proposed amendment, section 16 had positive implications if we could move on to the next plateau with that definition. It would be absolutely essential in a clause such as section 16, as it now stands in the bill, to indicate that a person cannot be discriminated against because of the handicap if, using whatever available and usable aids at a reasonable cost, that person with the handicap can perform the job.

For example, if a Braille typewriter is a condition precedent to the person performing the essential duties, the fact that a person is blind should not deny the job to the person, because the person with the handicap plus the aid may very well be able to perform the essential duties. The existing clause of section 16 would seem to limit it. They could say, "If you as a person with the handicap cannot perform the essential duties, then you are out," even though there are aids available, and improved aids all the time.

Similarly, with the question of hearing facilities of one kind or another that are available, all sorts of additional adaptive aids and accessories that can make the person with the handicap able to perform the essential duties are excluded by the present bill.

But I think we could have worked on section 16 and improved it by saying that you are talking about a person with a handicap plus the aids available in society which would permit the person to perform the essential duties so that the person should not be discriminated against. But now you suddenly say--if I may say suddenly, because it certainly was unexpected to me: "Not only are we going to stick to the essential duties, as the bill states, but we are going to add the further requirement that you can't get into the place where you can perform the job even if you can do the essential duties of the job." I think that is an immensely regressive step.

Then when you go on in subsection 2 to exclude even a board of inquiry it re-emphasizes to me the regressive nature of the amendment. I just think that's contrary to the whole spirit and intent of the bill. I know we have been critical of the bill and of various aspects of it, not in order to oppose the bill but in order to improve it.

To me you have taken an immensely regressive step, and I would certainly ask that it be stood down. Although I know that the members from your party who are involved in it are independent in their own judgement, when the chips are down they must ultimately support the minister, except in very extreme situations. And I don't think there's a single member of the committee from the Conservative Party who really wants to see handicapped people have this additional hurdle to jump.

I came in to the committee tonight thinking that we would be talking about building on section 16, not about stepping back from it, adding a further hurdle and making it for practical purposes an open sesame to denial of employment. I really think it's a serious question. I'm not being rhetorical or anything else; I would just like the minister to consider that position seriously. If I'm wrong in my understanding of the amendment, I was going to say I'd be the first to admit it, but I should say I'd be the last to admit it; that would be more consistent with my character. But that's the way I look at it. I really think it's an immensely regressive amendment.

Hon. Mr. Elgie: Jim, I think we know each other well enough to speak frankly. Section 40(2) of the reprinted bill says:

"Where the board of inquiry at the conclusion of the hearing finds that a right of a person under part I has been infringed by discrimination because of handicap the board may then"--and then only--"proceed to inquire into whether or not (a) access," et cetera, has been involved as additional issues.

If you go back to the debates you and I have had over Bill 209 and Bill 7 you will know I have indicated very clearly on many occasions that the government intended for this bill to deal with attitudinal discrimination and that if in addition to attitudinal discrimination there was a finding of access problems then the board could deal with it. I am saying to you now, and I have said it all along and repeated it again last week, that where access alone is an issue--and that would be a matter that would have to come out during the course of the investigation--I want it to be subject to investigation. If the commission then feels that the

access problem exists, regardless of attitudinal discrimination it may then endeavour to conciliate and reach an agreement on the issue of access. That has never changed, and to suggest that it's a regression is unfair.

We are doing here exactly what I said in my opening remarks: making it very clear not only in the remedial section but in the offence and exemption sections that we are reaffirming the areas and the methods we have proposed to deal with those problems. In no sense is it a regression. I think that thoughtful review of the remarks I have made and the Hansard of the debates we have had would confirm that. I hope you will understand within your heart of hearts there is no regression even if you can't say so publicly.

Mr. Renwick: No, I'm not of that number: I always state it publicly. I don't have any heart of hearts; it's always open to the public.

Hon. Mr. Elgie: Come on, Jim. Even old corporate lawyers like you have a heart deep down inside.

Mr. Renwick: Thank you. You keep putting me down for my corporate background.

Hon. Mr. Elgie: No. I envy you. It gives you a great understanding.

Mr. Renwick: I keep fighting for it, because occasionally I'm right on that area.

I don't want to give up on subsection 1, but if I read subsection 2 correctly--and I would appreciate Ms. Copps's comments on this, because I always do on these questions--it says "Where in the investigation of a complaint made under section 31 it appears to the commission that an exclusion or qualification"--those are remnants of the definition of discrimination that we kicked out last week--"is made only for a reason under subsection 1, the commission may endeavour to effect a settlement under section 32 but shall not request the minister to appoint a board of inquiry." So we never get access to section 40.

Hon. Mr. Elgie: Yes, we do if there is attitudinal discrimination. And if the board confirms that then it may proceed to deal with the question of access.

Mr. Renwick: No. It says, "A right under this act is not infringed for the reason only that access--"

Hon. Mr. Elgie: It says "only."

Mr. Renwick: "--to the premises is obstructed."

Hon. Mr. Elgie: Only.

Mr. Renwick: Yes. That's right: only that access is obstructed.

Hon. Mr. Elgie: That's the only issue.



Mr. Renwick: Yes.

Hon. Mr. Elgie: They have to make that determination. It is the only issue, and if that is the only issue they may conciliate it.

Mr. Renwick: I don't know what the relation between a and b is--the essential duties or necessary requirements, the exercise of the rights are incapable of being performed. Then both of those conditions apply to subsection 2. It seems to me, as Ms. Copps said, if I understood her correctly, that you are denying anybody the opportunity to get to section 40. Am I crazy?

Hon. Mr. Elgie: Is that addressed to me? Can we vote on that?

Mr. Renwick: It's not rhetorical.

Hon. Mr. Elgie: I'd support you, Jim, that you're not.

Ms. Copps: Mr. Chairman, on a point of order: We can get into this whole debate at one point or another, but it seems to me that when we constituted the committee one of the rules of the game was that if we were to have substantive amendments they were to be presented to the committee 24 hours in advance by all parties. We have tried to comply with that to date with respect to substantive amendments, and I suggest that maybe a way of dealing with this would be to get the government's final version here tonight--and I assume the lawyers are working on it--and then to set the whole matter aside until tomorrow morning, which will give us some 12 or 13 hours to take a look at the whole package.

We did agree at the beginning of the committee that we would have all our substantive amendments 24 hours in advance, and I would suggest that this is a substantive amendment.

Hon. Mr. Elgie: It hasn't been completely--

Mr. Chairman: The minister is asking if we agreed to that.

Ms. Copps: Yes, we did.

Mr. Chairman: I think the chair indicated that it would be a good idea. We may have strayed from it a little bit, but I'm not so sure it isn't a relatively good idea if we can follow it. Did you notice we agreed there?

Hon. Mr. Elgie: Can we get general agreement that this will happen from now on? You won't agree to that, Mr. McClellan? I know you have never practised it, but do you agree to it?

Mr. McClellan: Did I say anything?

Ms. Copps: Mr. Chairman, to date we have provided all our amendments to the bill--

Mr. Renwick: We agree in principle.

Hon. Mr. Elgie: I know. I understand your principles.

Mr. Renwick: Some people have had difficulty, though. It's always a little hard to keep up.

9:10 p.m.

Mr. Chairman: Mr. Minister, did I not sense that you were willing to stand down?

Hon. Mr. Elgie: Sure. I'm willing to bring this up first thing tomorrow morning, Mr. Chairman.

Mr. Chairman: We stand down all of 16, then?

Hon. Mr. Elgie: Fine. We'll bring it up first thing tomorrow morning. Do we have agreement on that?

Mr. Renwick: Before the matter is stood down could I ask the minister to consider seriously an amendment with respect to the essential duties aspect of it? There's absolutely no merit in the language. I recognize what Ms. Copps said, and it would help us if we could do it. But I was going to amend section 16 as it stands before we saw your amendment.

Ms. Copps: I have an amendment also in that regard, which has been tabled, but I don't think we can deal with the opposition amendments until we deal with the government amendment.

Mr. Renwick: Let me just get it on the record, in case the thought might get through to the minister--

Hon. Mr. Elgie: Hello, Albert. Nice to see you.

Mr. Roy: Do you prohibit smoking in this place?

An. hon. member: It's a good idea. Let's have a vote.

Mr. Renwick: --that section 16 be amended by adding thereto subsection 2 as follows: "For the purpose of this section the term 'handicapped' includes the use and availability at reasonable cost of such aids which would permit or enable the essential duties to be performed, and includes access at reasonable cost to the premises, services," et cetera.

What I am trying to get at is the original question of being positive about the essential duties aspect of it by enlarging on it to say that it is the person plus the handicap plus the aids that society has available to him to permit the person to perform the essential duties of the job. Put very bluntly, it seems wrong to me to deny a person a job with a typewriter simply because of the handicap if, at a reasonable cost, an aid such as a Braille typewriter could be available. There are any number of instances that would come to the minister's mind and to the mind of his advisers which would permit that.

Hon. Mr. Elgie: Well, I think you should feel free to put

that amendment in.

Ms. Copps, I hope it's understood that we will work on this and get it to you first thing in the morning.

Ms. Copps: My intention on what should be done is that the government would present its final amendment and then we would make amendments to the proposed new resolutions. Obviously, we don't agree with the spirit of the changed resolution, but I do not want to get into that debate right now.

Mr. Chairman: Are we agreed that section 16 will stand down until tomorrow morning?

Any discussion on 17?

Mr. Lane: I move that section 17 of the bill be renumbered as subsection 18(1), that as renumbered it be amended by striking out the words "The rights under part I to nondiscrimination because of creed shall not be construed to adversely" and that the following be substituted therefor: "This act does not--"

Hon. Mr. Elgie: Excuse me, Mr. Lane. What section are you on now?

Mr. Lane: Section 17.

Ms. Copps: Old 17; new 18.

Hon. Mr. Elgie: We haven't dealt with the new 17.

Mr. Lane: I'm sorry. I don't have it.

Hon. Mr. Elgie: Are you moving that section 18(2) of the bill be renumbered as section 17?

Mr. Lane: That section 17 be renumbered as section 18.

Hon. Mr. Elgie: No. That section 18(2) be renumbered as section 17.

Interjections.

Mr. Lane: Shall I start again?

Hon. Mr. Elgie: Yes, please. We didn't hear you the first time.

Mr. Chairman: Mr. Lane moves that subsection 18(2) of the bill be renumbered as section 17 and that the section be amended by adding after the word "facilities" in the second line the words "with or without accommodation." He further moves that the word "exclusively" in the fourth line be struck out and the word "primarily" be substituted therefor.

Hon. Mr. Elgie: Mr. Chairman, the reason these amendments have been introduced is that some organizations, particularly some



organizations with religious affiliations, indicated to us that they not infrequently had accommodation associated with their facilities. For instance, a church group that ran a summer camp had some accommodation, permanent and temporary, associated with its church. The same thing applied to other educational or fraternal organizations, for example. They felt they would be deprived of continuing that service to the group identified with them. That should legitimately be an area we felt was worthy of consideration.

It was also indicated sometimes the organization was not exclusively engaged in serving the persons identified by a prohibited ground, and it was important only that they be primarily engaged. We felt those were two reasonable suggestions; I hope members will as well.

Mr. Chairman: Perhaps I could clarify things for members. Does everybody know which one we are dealing with now? In fact, the other one was probably in order before this one but, because of the reprint, it would end up ahead of it in the bill. Is there any objection to dealing with this as proposed?

Ms. Copps: Did you drop the motion (inaudible)?

Hon. Mr. Elgie: No. That is coming along later on. We all favour public decency.

Mr. Chairman: It is to amend section 18(2) and to renumber it as section 17. If we are agreed, we can proceed in that way.

Ms. Copps: I have a couple of questions. First, there is the notion of "with or without accommodation," because "reasonable accommodation" has also been introduced as an element--or a nonelement--of the bill at this point. When you speak of accommodation per se, you are referring to the issue of housing, from their interpretation, and there is some confusion over that.

Hon. Mr. Elgie: Not really. That is in the bill. Section 2 deals with accommodation.

Ms. Copps: I have some question about the notion of "with or without accommodation," because I immediately thought of "reasonable accommodation," which is somewhat different from section 2 "accommodation."

The second question I have is I think when you get into the notion of "primarily" as opposed to "exclusively," you enter very dangerous ground. What you are then doing is allowing a specific fraternal, educational or philanthropic organization to discriminate selectively with respect to not only people who share the same specific interest but also the population at large.

A good example of that would be the notion brought to our attention by the Quebec human rights commission. The Montreal Roman Catholic Separate School Board had refused to rent its premises to a group that was covered by their prohibited grounds of discrimination, specifically because theirs covered a homosexual group. However, at the same time, because the "primarily" was

considered the notion, they did agree to rent their facilities to another group which was also philosophically and morally opposed to their organization's philanthropic teachings. It was ruled by the Supreme Court of Quebec that if they made that kind of selective judgement vis-a-vis other groups in the community, it was a case of discrimination.

The notion of "exclusive" versus "primarily" is an important one to safeguard. It is important that associations and organizations do have the right to serve their own membership and their own fraternal organizations et cetera. However, when you get out into the notion of the renting of accommodation et cetera, they may begin to get a little selective about whom they are renting to, even though they have indicated an interest in renting to, let's say, the public at large. That is where I would have some concerns about "primarily" versus "exclusive" use of accommodation.

Hon. Mr. Elgie: I understand the argument in the way you have wrestled with it. But there are community organizations that have a variety of members, such as honorary members, who are not exclusively identified with that group. These were groups that were very concerned that their exemption under this section might be in jeopardy.

Honestly, I do not think it creates a problem. It says, "membership or participation in a religious...institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified." I do not think that opens any doors, Ms. Copps. I think it does give some recognition to legitimate concerns that people have.

Ms. Copps: However, let us suppose I had a hall for rent, and I was primarily engaged in serving the Seventh-day Adventists. However, I decided to rent out my hall on the public market, bearing in mind my association with the Seventh-day Adventists, and I agreed to rent it to a group that was covered under the prohibited grounds of discrimination, but I would not rent it to another group covered in that same area. The discretion then would be left to me, and those other groups would not be protected under the legislation. Is that a fair assessment?

Hon. Mr. Elgie: If we nitpick--I know you are doing it legitimately, and you make some very good points, but there are many sections of this bill that are very difficult. We are trying to accommodate what we feel are legitimate interests without compromising our goal to strike at true discrimination. It was after a long thought process about this that we introduced those two amendments. We honestly believe it is not opening any doors that should not be legitimately protected.

Ms. Copps: How would you respond to the situation in which the Montreal Roman Catholic Separate School Board was subjected to thousands of dollars in litigation fees because "primarily" was the notion rather than "exclusive" in their code?

Hon. Mr. Elgie: I would have to read their code, first of all, to see exactly what it says, because there are great

differences between codes. But we are satisfied that in this code, with this wording, we are giving exemptions to legitimate concerns.

Ms. Copps: I am not a lawyer, and maybe Albert can clarify this point, but I would suggest the use of "primarily" as opposed to "exclusive" certainly would be setting the scene again for ongoing court battles. Our function here is to try to fine-tune the legislation as much as possible at this point to eliminate the possible expenditure of thousands of dollars on legal fees to get an interpretation of "primarily" as opposed to "exclusive."

Mr. Renwick: My question probably is a technical one, Mr. Chairman, but I do not know whether it is just grammatical. You commence this clause by saying, "The right under part I to equal treatment with respect to services and facilities..." Why do you not say, "The right under section 1 to equal treatment with respect to services and facilities..."? Why is there a broad definition, when you limit the word "right" to the singular?

I could understand part I if you were to say, "The rights under part I..." But in this case you start to talk about, "The right under part I with respect to services and facilities..." In a number of other places, you always specify the specific section. For example, in your bill, as amended, which we have for discussion purposes, in section 19(1) you have, "The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed..."

Is this a drafting error, or should it be limited to "the right under section 1 to equal treatment with respect to services and facilities..."? Are you trying to say more than I think is being said?

Hon. Mr. Elgie: No. I don't think so.

Mr. Renwick: Services and facilities are in section 1.

Hon. Mr. Elgie: But there is also constructive discrimination in section 10.

Mr. Stone: Mr. Chairman, this was under section 1 in Bill 7 as referred to the committee. The reason I thought it should say "part 1" was the overtones of "accommodation," which might involve section 2. I would not want someone to take advantage of that reference being narrower than what we wanted it to apply to. That is why it was moved up. It may be that it should be "rights," but that is the sole reason why section 1 was changed to part I.

Mr. Renwick: So the reason you changed the clause in the revised bill, as the minister has presented it, from the way it was was that, having introduced the word "accommodation," you are including section 1 and section 2. Is that the reason?

Mr. Stone: That's the reason.

Mr. Renwick: I do not want to press it too far. Would it not have been better to say, "The rights under sections 1 and 2 to equal treatment with respect to services and facilities..."? I do



not know whether the point has substance, but it is certainly a significant drafting point.

Mr. Stone: I think that would equally carry out the intent as I understand it. I do not see why it makes very much difference.

Mr. Renwick: If it were to carry into section 10, as the minister says, I would have a little bit of--

Mr. Stone: I think the right under part I is qualified by section 10; so it becomes wherever part II says it is, but it is under part I.

Mr. Renwick: Why limit it to the word "right"? Why not add the "s"?

Mr. Stone: I would agree with that.

Hon. Mr. Elgie: That's no problem.

Mr. Renwick: It should be "the rights." From the point of view of somebody trying to understand it, we have to look at all--if you are saying "the rights under part I," then people can say, "I have to look at all the rights to see what this means." If you say "the right under part I," you start to hunt for a single right.

Mr. Stone: No. It is the rights under part I to equal treatment with respect to services and facilities with or without accommodation. It does not extend any farther than that. So you do not need to look at everything in part I; you just look at what it says.

Mr. Renwick: I am not sure whether you agreed with me or not. Are you going to add the "s"?

Hon. Mr. Elgie: Whatever counsel thinks is appropriate. Do you think it is reasonable, Arthur?

Mr. Stone: Yes.

Hon. Mr. Elgie: Okay; fine.

Mr. Renwick: My next concern is that, as I understand it, this is totally distinct from the provisions of section 23(a) of the minister's bill and section 21(6) of the bill that is before us. What I am saying is that section 21(6) of the bill that is before us is equivalent to section 23(a) of the minister's bill. Am I correct in that?

Hon. Mr. Elgie: Section 23(a); that's employment, Jim.

Mr. Renwick: Yes. And looking at the minister's bill, section 23(a) is equivalent to section 21(6) of the bill that is before us. Is that correct?

Hon. Mr. Elgie: Yes.

Mr. Renwick: Having settled that, my point is that section 17, which is now before us, under the amendment is totally separate and distinct from the other clause. Is that correct?

Hon. Mr. Elgie: Yes. We have gathered together all the other things that deal with employment. We have put employment all under one section for clarity in the bill.

9:30 p.m.

Mr. Renwick: So we are really talking here about what are called nonschool operations. What I am trying to get at is the one with respect to employment is the one under which people are excluded from employment in the separate school system because of religion. Am I correct?

Hon. Mr. Elgie: Yes.

Mr. Renwick: Section 17 has nothing to do with that question.

Hon. Mr. Elgie: That was employment, as I understand it. This deals with what might be a religious school, for example, that had accommodation.

Mr. Renwick: I recognize the point Ms. Copps has made, but I think "exclusively" would be too rigid a word and "primarily" is probably the best way of providing the flexibility that is required. I suppose, in theory, if a club that catered to a particular ethnic group were confronted by spouses, one of whom was not a member of that group, you might have some trouble getting the spouse who was not a member of the group into the club.

Hon. Mr. Elgie: Unless the word "primarily" was there; if you said "exclusively."

Mr. Renwick: If you said "exclusively," yes.

Hon. Mr. Elgie: It gives a degree of flexibility for honorary members.

Mr. Renwick: That is a very simplistic example, but I assume that is what you are trying to do: to alleviate against the rigidity.

Hon. Mr. Elgie: That's the idea. That's right.

Mr. Renwick: All right. I don't have that problem then. After that long dissertation, I will accede to the section with the letter "s" added to "right."

Ms. Copps: It is my understanding that section 17 is to the effect that if you are exclusively engaged in serving a specific group, for example, the Roman Catholic church, and you rent your home to Catholics so you have a contractual arrangement with Catholics, you are not bound by any of the regulations under part I with respect to equal treatment.

If Mr. Renwick has no problem with the use of "primarily," maybe you can clarify it for me on this. How would you respond to the argument, as occurred in Quebec and went all the way to the Supreme Court, that under certain circumstances this section would give you the right to say: "I am primarily renting to Catholics, because I am a Catholic or my organization is Catholic. However, under certain circumstances I will rent to Protestants but not to Jews"?

My reading of this legislation is that would be allowed, because you are exempt from the part I discriminatory clauses. If you only primarily engaged in it rather than exclusively, it would still leave you the option on selective occasions to say, "I will rent to Protestants but not to Jews," because you are not bound by the determination of part I. I guess I am looking at it from the other point of view in that it could potentially be used as a loophole for selective discrimination.

Mr. Renwick: I am sorry. I was distracted, because the New Democratic Party appears to have won in Manitoba, 34 seats to 22 seats.

Hon. Mr. Elgie: Oh, what a travesty! What was the turnout? Thirty per cent?

Mr. Renwick: I am sorry, Ms. Copps. I was distracted by that.

Ms. Copps: My question is on the issue of "primarily." There actually could be a situation where a church that, let's say, is primarily engaged in serving Catholics might on occasion decide to rent to Protestants but not to Jews. You are allowed to do that, from my understanding of the reading of that section, because it says that part I does not apply. That did happen in Quebec where they had a situation where a Roman Catholic separate school board rented to pro-abortionists but not to homosexuals who are (inaudible). So the homosexuals who were (inaudible) went all the way to the Supreme Court and got the finding that what they did was discriminatory even though they had this exception. It set up that whole--

Mr. Chairman: Ms. Copps, if you want to ask Mr. Renwick, will you go out and ask him? If you want to speak into the mike and address the committee, please do that.

Ms. Copps: I am sorry. I have some concerns on that section, and I do not know that they have been addressed. I can see the other side of the coin that you don't want to be that rigid, but I am setting up a scenario that potentially could happen, and I do not know what the answer to that would be.

Mr. Roy: May I make this comment, Mr. Chairman? I take it the view of the ministry is simply that if you put "exclusively" there, there might be situations--Mr. Renwick has given an example, and I can think of others--where someone interpreting this section rigidly could say "exclusively" means you have to stick just to your members.



Hon. Mr. Elgie: Never waiver.

Mr. Roy: You can't waiver. That appears to be inflexible. What Ms. Copps is mentioning is certainly a possibility, that by putting in "primarily" they can say, "We can then rent it to other people and therefore we are not bound by part I and we can in some ways discriminate." I take it you are trying to arrive at a sawoff there.

I do not know if you are following me about what she is suggesting but, by using the word "primarily," a group could well say: "We do not have to rent exclusively to our members. We can rent to somebody else, and by renting to somebody else we are not bound by part I." I see her point. I do not know if you follow me.

Mr. Stone: Since you directed that to me, Mr. Roy, let me point out that the only thing that does not constitute discrimination under part I--it does not say part I does not apply; it says the only thing that does not constitute discrimination is in so far as you require a person to be a member.

Mr. Roy: Oh, yes.

Mr. J. M. Johnson: There now; let's vote.

Mr. Roy: Do you get his point, Sheila? That the discrimination he is talking about is discrimination against people in that group? Is that the way I understand--

Ms. Copps: No. It is discrimination with respect to services and facilities.

Mr. Roy: That is the interpretation that--

Ms. Copps: I do not want to belabour the point, but I think I have made my point.

Mr. Roy: Even though his interpretation was not the proper one, I still see the ministry having some difficulty arriving at a proper compromise without being too rigid in its legislation in exempting a group and at the same time even looking at the evil that might be created by this flexibility.

Mr. Chairman: Ready for the question? I am sorry; who moved this? Mr. McNeil, do you agree to add "s" to the word "right"?

Mr. McNeil: Yes.

Mr. Chairman: All right. Does everybody understand what we are voting on?

Motion agreed to.

Section 16 agreed do.

On section 18:

Mr. McNeil: I move that section 18(1) be renumbered as section 19(1). I further move that, as renumbered, section 19 be amended by adding thereto the following subsection:

"(2) The right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in our athletic organizations or participation in an athletic activity is restricted to persons of the same sex."

9:40 p.m.

Mr. Chairman: We are too far along. Just a minute; we are on section 18. I think, Mr. Lane, you are now ready to proceed.

Mr. Lane: With section 18 coming before 17 and the New Democratic Party being ahead out west, I am--

Hon. Mr. Elgie: Never mind. We passed one section; so we have done very well.

Mr. Lane: I move that section 17 of the bill be renumbered as section 18(1) and, as renumbered, be amended by striking out the words: "The right under part I to nondiscrimination because of creed shall not be construed to adversely, and that the following be subject to it therefore: This act does not," and then carry on with the balance of the section."

Hon. Mr. Elgie: I think you will all recall the presentation of the Catholic school board, saying that the Education Act and the British North America Act, whatever rights were given to them, went beyond creed. On reading the Education Act, that is indeed so. So this wording is taken exactly out of the Education Act. Whatever rights were given under the BNA Act are preserved and not just those related to creed, which we could not have overruled anyway.

Mr. Renwick: I do not have any problem with this section 18(1) in the minister's bill. I do not have a problem with that. I have a problem with subsection 2, whenever that comes up.

Mr. Chairman: Is there any objection to 18(1)? Carried. On section 18(2), Mr. Renwick?

Mr. Renwick: I do not know how--

Mr. Chairman: Has section 18(2) been read?

Mr. McNeil: I move that section 18(2) of the bill be renumbered as section 17 and that the section be amended by adding after the words "facilities"--

Mr. Chairman: No, no.

Mr. McNeil: We have already had that one. Just as clear as mud. I move that section 18(1)--is that the one you want?

Mr. Chairman: Yes.

Mr. McNeil: --be renumbered as section 19(1).

Mr. Chairman: No.

Mr. McNeil: I move that section 18 of the bill, as renumbered, be amended by adding the following subsection thereto: "This right does not apply to effect the application of the Education Act with respect to the duties of teachers."

Hon. Mr. Elgie: Mr. Chairman, this is why it would have been easier if we had dealt with the reprinted bill as I suggested at the beginning.

Mr. Renwick: I would ask that this amendment not be adopted. The reason I am asking it is that, if anybody reads the Education Act with respect to the duties of teachers as it was read to us in the committee during the hearings, it would indicate that not only is it archaic and inappropriate but also we should not be incorporating that kind of language in a modern bill dealing with human rights.

I ask that the minister or his advisers read to us the section, which is almost couched in terms of gobbledegook at the present time. To make this bill subject to it, I think leads to immense ambiguity.

Hon. Mr. Elgie: Mr. Chairman, someone is bringing in the Education Act so that the section dealing with the duties of teachers can be read. But I remind members that the Education Act has been amended from time to time; it has clearly spelled out the duties of teachers. The government, in response to submissions made before this committee, feels that the duties outlined in the Education Act should not be affected by the application of this bill. If I could ask your indulgence, it is coming down.

Mr. J. M. Johnson: Mr. Renwick, I would like to point out my concern that this should be in the bill. It would appear under section 18(1) in the renumbered bill that it would give a special right to the separate schools but would not carry over into the public sector.

Our concern was that we felt both our schools should be treated in the same manner. By having this section in, it was our feeling we would protect the interests of the school boards in trying to hire the best teachers available and to give the board some discretion over duties teachers should perform.

Mr. Renwick: I think that is a helpful place to pick up the discussion. We are agreed it deals with employment in the schools. Therefore, it would seem to me, leaving aside the problem of the language, at least it should be in the section of the bill dealing with equal treatment with respect to employment. In the minister's bill that is section 23 and in the bill before us it is section 21. It is an employment question; is that not correct?

Hon. Mr. Elgie: If Mr. Renwick wants that section of the Education Act read into the record, I have it here now.



Mr. Renwick: I would appreciate that.

Hon. Mr. Elgie: It is section 235 dealing with duties of teachers.

"(1) It is the duty of a teacher,

"(a) to teach diligently and faithfully the classes or subjects assigned to him by the principal;

"(b) to encourage the pupils in the pursuit of learning;

"(c) to inculcate by precept or example respect for religion and the principles of Judaeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues;

"(d) to assist in developing co-operation and co-ordination of effort among the members of the staff of the school;

"(e) to maintain, under the direction of the principal, proper order and discipline in his classroom and while on duty in the school and on the school ground;

"(f) in instruction and in all communications with the pupils in regard to discipline and the management of the school, (i) to use the English language, except where it is impractical to do so by reason of the pupil not understanding English, and except in respect of instruction in a language other than English when such other language is being taught as one of the subjects in the course of study, or (ii) to use the French language in schools or classes in which French is the language of instruction except where it is impractical to do so by reason of the pupil not understanding French, and except in respect of instruction in a language other than French when such other language is being taught as one of the subjects in the course of study;

"(g) to conduct his class in accordance with the timetable which shall be accessible to pupils and to the principal and supervisory officers;

"(h) to participate in professional activity days as designated by the board under the regulations;

"(i) to notify such person as is designated by the board if he is to be absent from school and the reason therefor;

"(j) to deliver the register, the school key and other school property in his possession to the board on demand, or when his agreement with the board has expired, or when for any reason his employment has ceased; and

"(k) to use and permit to be used as a textbook in a class that he teaches in an elementary or a secondary school (i) in a subject area for which textbooks that are approved by the minister, only textbooks that are approved by the minister, and (ii) in all subject areas, only textbooks that are approved by the board."

"(2) A teacher who refuses, on demand or order of the board that operates the school concerned, to deliver to the board any school property in his possession forfeits any claim that he may have against the board."

"(3) Teachers may organize themselves for the purpose of conducting professional development conferences and seminars."

Mr. Renwick: Thank you.

Hon. Mr. Elgie: My pleasure.

Mr. Renwick: I am pleased the minister read it all. Do you not think that is kind of a sweeping exception, therefore, to put in this act? Where could there possibly be any conflict? You know the point where the conflict occurred was in connection with the presentation of the Metro Toronto Separate School Board on the question of the definition of family, or the question of people living in a common-law relationship. It had something to do with that clause "Judaean-Christian morality."

9:50 p.m.

Hon. Mr. Elgie: Do you want me to read it again?

Mr. Renwick: No, do not read it again. Surely we should not be putting an exception with respect to that broad category into a human rights bill, most of which has no relation to this question at all. I am not questioning the legitimacy of the points the people were making. They were not making them about whether one uses the proper books of instruction or whether one turned over the key to the school, or whatever all that part was about. It had very specific application.

Hon. Mr. Elgie: I cannot add to your remarks. Other members may want to comment on them. There are strong feelings in the government about that section of the Education Act, which as you know stood the test of debate on other occasions. That is a matter this government feels should have primacy. Do any of my colleagues want to comment on that?

Mr. Stevenson: I agree very much with what Mr. Johnson has said.

Mr. Eaton: We support him.

Mr. Renwick: What has a great deal of what you just heard the minister read got to do with the human rights bill? Are you setting the teachers in a class apart?

Mr. J. M. Johnson: Mr. Chairman, if we accept 18(1), which pertains to the British North America Act and the rights of the separate schools, then by inserting this clause we are giving similar protection to the public sector. I feel there is no way that I as a member of this committee want to set up two sets of standards for the school system. What applies to one should apply to the other.

Mr. Renwick: Would you agree with me, Mr. Johnson, that at least it should come under the section dealing with employment?

Mr. J. M. Johnson: I cannot answer that, Mr. Renwick.

Mr. Renwick: I want to say to the members of the committee, without raising the question of religious differences, which I do not believe are a legitimate matter of discussion in a society where tolerance of religion is total, that this clause inadvertently will allow an immense amount of discrimination on the grounds of particular persons' values and perceptions of values. It will be used for that purpose. That is what bothers me about it.

It is a value call and a value judgement call. I just want to express my reservations about it. The introduction of this had to do with very specific concerns, not about teachers' duties generally and their responsibilities, about which we can all be agreed, but about the very limited discriminatory basis of dealing with teachers in their employment in the school.

Whether the myth is equal to the reality, I do not know, but one of the clauses was designed to ensure a person could be either dismissed from employment or not be hired because the person was not living in holy wedlock. That was one of the bases put in front of us. With respect to employment in a multicultural society, that is a very difficult concept to put forward at the present. It is honoured in the breach, as everyone will be well aware, whether it is in either aspect of the public school system. Would you not agree, Mr. Johnson?

Mr. J. M. Johnson: Partially, but not totally.

Ms. Copps: In an effort to be consistent, section 18(1), which we have already passed, and section 18(2) do go hand in hand. In section 18(1), you are allowing the separate schools certain discretionary powers. You are telling them, for the purposes of this act, that they are allowed to discriminate on bases including marital status, which has been upheld in the Supreme Court. To suggest that kind of discretionary power should be awarded to separate schools but not to public schools seems somewhat inconsistent. I wonder, if that rationale is to be followed through, why we all agreed to section 18(1).

Mr. Renwick: Whether it is in the separate school system or in what is known as the public school system, it affects everybody there. It means that if an interpretation is put that Judaeo-Christian morality means that teachers may not cohabit with members of the opposite sex without being married, then you are opening the door to discrimination. In my judgement, you are also running contrary to the reality of the world that we live in.

Hon. Mr. Elgie: The duties section of the Education Act was revised in 1974, chapter 109. It is a matter that has been before the Legislature as recently as 1974 for public scrutiny, and it was the determination of the Legislature at that time that it approved of those duties.



All that Mr. Johnson and other members of the government party are saying is that they do not intend this act to override those duties that have been set out in the Education Act. It is as simple as that for me.

Mr. Renwick: Would you put it at the end of the bill?

Hon. Mr. Elgie: I think it will stay right there.

Mr. Renwick: This relates it to the separate school system.

Hon. Mr. Elgie: No, it does not.

Mr. Renwick: I do not think that is fair.

Ms. Copps: To clear that up, my understanding is that in section 18(1), which relates specifically to the separate school privileges under the British North America Act, the issue of marital status was dealt with in the courts and upheld under section 18(1). Therefore, section 18(2) is an attempt to offer the same kind of discretionary power to the public school system. We had some comments relating to that, from both the public and separate systems. There is something inconsistent there. If you go for section 18(1), you have to support section 18(2).

Mr. Chairman: I appreciate what you are saying, but I do think all members do know what they are voting on.

Shall section 18(2) carry? Carried.

10 p.m.

Mr. McNeil: I move that section 18(1) be renumbered as section 19(1). I further move that renumbered section 19 be amended by adding thereto the following subsection:

"(2) The right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in athletic activity is restricted to persons of the same sex."

Mr. Chairman: I think you read section 19(2).

An hon. member: That is the right amendment, because section 19(1) was not changed.

Mr. Chairman: Section 19(1) was not changed.

Mr. Renwick: I think it is right. Is this what the minister referred to in his statement for a task force? Is that not correct?

Hon. Mr. Elgie: No, that is the new section 19(2). Section 19(1) deals with restriction of facilities by sex.

Mr. Renwick: I was dealing with the amendment moved by Mr. McNeil, which was section 19(2).

Hon. Mr. Elgie: Oh, did we not put section 19(1) up?

Mr. Chairman: It had to be renumbered. It was just a renumbering. Shall 19(1), as renumbered, carry? Carried.

On section 19(2)?

Hon. Mr. Elgie: Yes, section 19(2) is the matter of single-sex sports that I referred to in my opening statement. I indicated I would be announcing a task force to inquire into the matter and report to me.

Mr. Renwick: What is the state of the task force? When are you likely to announce it, or have you announced it?

Hon. Mr. Elgie: No, it will be announced in the next couple of weeks. We are trying to set up an appropriate task force.

Mr. Renwick: I very seldom name people. Are you giving serious consideration to appointing Bruce Kidd to that task force?

Hon. Mr. Elgie: Bruce Who? We want people who do not have their opinion already formed and their decisions made. Are you suggesting him as an unbiased observer to take part in this? Is that what you are suggesting?

Mr. Renwick: I am suggesting he is a very knowledgeable person about the implications of the question which is involved, probably the most knowledgeable in Ontario.

Hon. Mr. Elgie: I do not think there is any doubt that a task force would want to meet with Mr. Kidd.

Mr. Renwick: Would it be possible for me to suggest that you appoint him to the task force?

Hon. Mr. Elgie: Anything is possible, Jim. All I am saying is, our search will be for people who come to it with some degree of openness.

Mr. Renwick: Oh, come on. He means some degree of bias in the opposite direction. Is that what you are talking about?

Hon. Mr. Elgie: Come on now, Jim. That has never been my style; you know that.

Mr. Renwick: Neither is it Bruce Kidd's style.

Hon. Mr. Elgie: Yes, I know.

Mr. Renwick: Can you tell us who you were thinking of appointing?

Hon. Mr. Elgie: I have not even got the names drawn up yet. We are considering a number of names, and I am not prepared to discuss them.

Mr. Renwick: When do you expect to make the announcement?

Hon. Mr. Elgie: Within the next week or two.

Mr. Renwick: Within the next--don't be belligerent.

Hon. Mr. Elgie: I am not.

Mr. Renwick: The reason I ask is that I want to, if I can, accept the discrimination implied in this bill, but I want some assurance from the minister, or some statement to be made, that a task force will be appointed. I want some statement about who will be the members of the task force. When does he expect to provide for a report from that task force, and what is the process by which that task force report will then be considered? How does it come back to the question of whether there is going to be an amendment to this bill?

What you are asking us to agree to is a temporary suspension of that question while your task force deals with it. Am I fair?

Hon. Mr. Elgie: You are partially fair. What I am saying is we are proposing--

Ms. Copps: Excuse me, on a point of order: Can we deal with the amendment as it sits?

Mr. Chairman: Yes. Do you want the minister to respond to Mr. Renwick or not?

Ms. Copps: Sure, but let's--

Mr. Chairman: There is a fair amount of latitude being allowed in this.

Hon. Mr. Elgie: What we are saying is that we propose section 19(2). In the meantime, I am going to announce the appointment of a task force some time within the next couple of weeks that will review the matters. That will involve a matter of receiving a deputation and briefs and so forth. Then the task force will report to me, and I will bring that report to the government once I have made some decisions on the basis of it.

You are asking me if I am going to come in immediately with amendments. That will depend on what the report says. It will depend on what the cabinet says and how the government feels about it. You know that.

Mr. Renwick: I understand that. All I am asking you to do is to give me some indication of when. What are you going to say to the task force? Are you going to tell them they have from now until the next parliament to deal with it? Or are you going to say to them: "Look, this is a question that has been talked about, reviewed, elucidated on and discussed for quite some time; so will you report to me within the next year?"

Hon. Mr. Elgie: When the terms of reference are drawn up, I will have no trouble making them public so you can see what the



terms of reference are. I will be pleased, once those terms are drawn up and those people are selected, to give some indication of the time frame, but I do not have that time frame in mind now.

Mr. Renwick: You don't give me the impression of a minister who treats this as a matter of urgency when in the public mind it is a matter of immense urgency. This now permits the kind of discrimination which up until now was at least open to objection by people amongst the members of the public. This precludes any objection being raised. I think you have a real obligation to advise us when the decision is going to be made on the question. You cannot take forever.

Hon. Mr. Elgie: I have no further comment.

Mr. Renwick: I have obviously offended the minister by suggesting for a moment that he was asking us, by this amendment, to put into a human rights bill what is now not determined as a matter of law. So you are trying to pre-empt the question.

Hon. Mr. Elgie: I think what I am doing was made very clear in my statement and very clear in my remarks.

Mr. Renwick: You will not answer the question about when it is going to be done.

Hon. Mr. Elgie: Because we have not made that determination yet.

Ms. Copps: Obviously, we cannot support this amendment since we already introduced a motion that runs directly counter to it. Regardless of whatever task force may be instituted over the next few months, what we have to deal with here is the legislation. This legislation is clearly discriminatory with respect to athletic activities. We have already proposed a motion, and I think the arguments have been well aired on all sides relating to the notion that athletic activities should be included as a service under the definition of "services." That was defeated. I do not want to air the arguments again. I think we can go through Hansard for what was said by those of us who were here. But we cannot support the amendment.

Mr. Renwick: I would go back to what I said. I want to support the amendment, but I cannot support it in light of the indefiniteness of the minister's response to my question. I will vote against the amendment.

Mr. Chairman: All those in favour of section 19(2) as amended?

Section 19(2) agreed to.

On section 20:

Mr. Chairman: Mr. Kolyn moves that section 19 be renumbered as section 20; that the words "and his family" in the fourth line of subsection (1) be struck out and the words "or his or her family" be substituted therefor; that the words "and his

family" in the fifth and sixth lines of subsection (2) be struck out and the words "or family of the owner" be substituted therefor; that the words "or his family" in the last line of subsection (3) be struck out and the words "or family of the owner" be substituted therefor; and that the word "family" be struck out where it appears in subsection (4) and that the words "family status" be substituted therefor.

Hon. Mr. Elgie: Mr. Chairman, where the word "or" is inserted, it was simply to correct a drafting error so that the wording is in accord with the present human rights code. The word "or" was already in place in other sections and it was just a drafting error. As to the words "family status" I think the reasons for changing that have been dealt with in the past.

Mr. Chairman: Is there any discussion on any part of section 20?

Mr. Renwick: Could we take it by subsection?

Section (20)(1), (2) and (3), inclusive, agreed to.

On section 20(4):

Ms. Copps: We have an amendment that was previously numbered under section 19(4), which would now become section 20(4). You should have a copy of that amendment.

Basically we are suggesting section 20(4) be deleted. I think the argument behind its inclusion is clearly discriminatory and there is a deliberate intention on the part of the government to exempt all buildings that could be classed as buildings with common entrances or high rises from the nondiscrimination against families part of it, and I think this is anti-family legislation. We take the position that children are people too and, bearing those facts in mind, in view of the critical housing situation in the city of Toronto, as well as in other areas, to build into human rights legislation a clause that would allow you to discriminate against families with children is clearly unacceptable in 1981.

10:10 p.m.

There is certainly precedent in other provincial legislation, as well as state legislation in the United States, for the notion that families cannot be discriminated against in any context. I think we are getting into the argument here as to whether adult-only buildings should or should not be allowed. We feel if there are problems with respect to tenants, be they children or adults, those tenants can amply be dealt with through the Landlord and Tenant Act. In my own personal experience, living in any buildings that included children, I often found the problems I had with other tenants related to adults who enjoyed loud music or other activities and not to the children.

One of the problems created by this kind of adult-only discrimination is that you have areas, for example, in the city of Toronto, that become the only areas where children are allowed, which sets up a ghettoization which, in turn, can lead to the kind

of social problems we have seen in certain areas in Toronto.

If the government took a positive attitude towards families, which the Premier (Mr. Davis) did in his original statement in the throne speech, if I remember--he made a very strong commitment to families and the notion that we have to encourage the flourishing and enriching of the family in Ontario--I would suggest that if this government is truly committed to the flourishing of the family, it will not allow a section that is clearly discriminatory against families. To do so is denying everything it purported to stand for in the last throne speech.

I cannot see any other reason for the inclusion of section 20(4) than the notion of preserving an adult-only status in buildings. To the argument that it would somehow jeopardize the very fine establishment of senior citizens' buildings in this province, I think the minister is fully aware that there would be a possibility of rectifying or including senior citizens as a particular economic group who can be served through seniors-only buildings. I don't think the deletion of section 20(4) would, in any way, jeopardize the notion that senior citizens across Ontario can, and are, being well served by the kind of senior citizens' buildings that have been constructed through Ontario Housing Corporation assistance or private community-based funding.

I would reiterate that if this government is truly committed to the family, it cannot allow this discriminatory legislation against children. In fact, in the Landlord and Tenant Act, if you ask the experts within the Ministry of Consumer and Commercial Relations, a person cannot have a no-pet clause in their lease. That is not allowable. That is not legal. In other words, we are saying that, according to the Landlord and Tenant Act, until and unless a pet causes a problem, they are allowed to be in any building in this province, regardless of what you may have in your lease. We are saying that pets are allowed in any building in this province, but children are not.

I think that is certainly setting up a very dangerous precedent, and one that we, as a party, certainly would not want to support. I reiterate that there are provisions, if there are problems with any tenants, including children, and there may well be in some instances, those problems can be adequately and properly dealt with through the Landlord and Tenant Act. We should not use this human rights code to legitimize discrimination against children.

In other jurisdictions where they have eliminated the adults-only concept, there has not been any ensuing hue and cry from the population. So from a political point of view, I think the government's fear of eliminating adults-only buildings is unwarranted. I also feel that if it is truly committed to the notion of human rights for all individuals, including children, we really have no choice but to delete section 20(4) from the code, bearing in mind at all times that we would build in an exemption that would allow senior citizens' buildings that are publicly or community assisted to carry on in the same way as they have been allowed to develop over the last few years.



Hon. Mr. Elgie: Mr. Chairman, I would be glad to comment on this, if I may. I do not think there is any issue that is a more difficult one for us to face, nor was it an easy one for the commissioners who held hearings throughout this province prior to the writing of Life Together. Indeed, if you read Life Together, you will see that the conclusion of its authors was that the crucial question is whether enough housing accommodation for families with children is available within a particular area of a community.

In other words, they recognized there was a very difficult balancing of rights in this area, because the government feels there are people who (a) have chosen not to have children, or (b) have children who have grown up and choose to live in what they term quiet accommodation, which is a common law principle we all understand. To say they should not have that right is clearly a question we have to face and the authors of Life Together had to face. I know it is a difficult one. The authors of Life Together found, as I recall, there was a particular shortage of accommodation in Ottawa, Oshawa, Toronto and Sarnia.

I would remind members that the city of Toronto in 1975 had a bill passed, the City of Toronto Act, which under section 4(3) gives them the power, and I read this: "Where a policy statement has been adopted under subsection 2, the council of the Corporation may pass bylaws prohibiting any person, directly or indirectly, alone or with another, by himself or by the interposition of another, from discriminating against any person with respect to any term or condition of the occupancy of housing accommodation because such person has children who would be sharing the housing accommodation with him where occupancy of such housing accommodation by adults and children is deemed appropriate thereto by the policy statement referred to in subsection 2."

What I am saying is that, since it is a very difficult problem to try and balance those rights, where a city feels it does have a problem and recognizes it as such, in this case, it obtained legislation to permit it to deal with the problem. I think we have to get down to the case of what the diagnosis is. The commission in Life Together decided the diagnosis was a housing shortage, and the symptom is that families may or may not, in all areas, be having difficulty getting accommodation. I do not think a human rights code per se can easily address this issue, which is a difficult balancing of a variety of rights.

I do not think that is inconsistent with our views on the family. The words "family status" are added in this bill to cover all areas. It is true there is some limitation in subsection 4 but all other accommodation that has a separate entrance is fully covered by this code, and I remind you of the option that communities that feel pressed do have.

Mr. Renwick: Mr. Chairman, could I go at this clause in a somewhat different way? I want to support the amendment proposed by Ms. Copps, unless the minister can explain to me what the meaning of section 20(4) is.

Hon. Mr. Elgie: That is an awful burden to put on me--the

exact meaning.

Mr. Renwick: What is it intended to say? Does it say what it appears on the face of it to mean, that if you find a building that contains more than one dwelling unit, and you find something called a common entrance, if it is, at the time this bill comes into force or at any time thereafter, gradually designated as a building that is limited with respect to family, does that mean this is an open sesame to all buildings that meet that first requirement to be limited to adults only? Is that what this says? Is this saying it is that wide open?

Hon. Mr. Elgie: I think it is quite apparent that it says wherever there is a common entrance to a number of units.

Mr. Renwick: So if the day this act comes into force there is a building--

Hon. Mr. Elgie: It is exactly as it is today. There is no prohibition today. This preserves the status quo.

Mr. Renwick: There will not be any prohibition when this is passed?

10:20 p.m.

Hon. Mr. Elgie: Except it eliminates discrimination or perceived discrimination in the area of other housing; separate entrances, single-family dwellings.

Mr. Renwick: Where there is no discrimination now.

Hon. Mr. Elgie: Look, I think the member understands exactly what I am saying.

Mr. Renwick: No, I do not.

Hon. Mr. Elgie: The previous code did not cover family status so there could be discrimination or perceived discrimination in any type of housing.

Mr. Renwick: I understand now.

Hon. Mr. Elgie: This code limits it now to those areas where there is a common entrance. That is pretty well defined in that section.

Mr. Eaton: If I have a house I cannot decide I do not want to rent it to families?

Hon. Mr. Elgie: That is right.

Mr. Eaton: If somebody has an apartment building they can decide they do not want to rent a unit to a family?

Hon. Mr. Elgie: That is right.

Ms. Copps: So there is a basic inconsistency there.

Mr. Renwick: Again if I understand what the minister said, and I think I do, how does the minister justify discrimination against families with children in Ontario on Tuesday, November 17, 1981?

Hon. Mr. Elgie: Mr. Renwick, I am not saying it is an easy problem and I have acknowledged that. It is a very difficult problem to balance rights in this area. The government, in its rental-assisted housing program announced last February, made it a term of those loans that the housing must be available to families, as is so with Ontario Housing and so forth. What we are saying is there are legitimate requirements that some adults in society have as well. This is preserving those and the status quo.

Mr. Eaton: Mr. Minister, for clarification. If I am renting the upstairs of my house as a duplex, the entrance is from the outside, separate--

Hon. Mr. Elgie: A separate entrance.

Mr. Eaton: I can or cannot say that I do not want any kids up there?

Hon. Mr. Elgie: No. If there is a separate entrance, then you could not.

Mr. Eaton: Yet a person living in an apartment building has the right not to have kids above him or beside him?

Hon. Mr. Elgie: That is right.

Mr. Eaton: It is unfair, totally unfair, I have to say.

Ms. Copps: So Mr. Eaton is going to support our amendment, right?

Mr. Eaton: No, I am going to make a further amendment.

Hon. Mr. Elgie: The member does not know which way the amendment is going to go.

Mr. Eaton: Totally unfair. I cannot believe that.

Mr. Renwick: I have absolutely no problem, as I am sure most people do not have any problem, with the specific provision with regard to adults only for senior citizen accommodation, however that particular clause is drafted. I find it extremely difficult to suggest every other building in the province that happens to have something called a common entrance can be restricted to adult-only accommodation. I find it extremely difficult to accept the minister's idea that it should be limited to the particular municipality that finds--

Hon. Mr. Elgie: It is not my idea; it is Life Together's recommendation.

Mr. Renwick: I understand that, but even at the time of



Life Together there was a very low vacancy rate. Today there is no vacancy rate.

Hon. Mr. Elgie: It is a housing problem.

Mr. Renwick: And the limitation is for people with families. More and more buildings are being limited to adult-only people. The other one, which I do not know, but I ask it simply because the one field of any knowledge of housing I stayed away from is condominium--I do not know anything about it--but is there a common entrance to a condominium property?

Hon. Mr. Elgie: Yes. It depends on the condominium. There are different kinds of condominiums.

Mr. Renwick: There is a condominium which is an apartment building and has a common entrance like an apartment building. I am talking about an estate condominium which is open. You walk through a gate or a plot on the grass or whatever you want to do, and that is a common entrance to private property, presumably.

Hon. Mr. Elgie: No.

Mr. Renwick: As far as I can tell, that would be--

Hon. Mr. Elgie: More than one building.

Mr. Eaton: Mr. Chairman, I have a real problem with this one. Since there is one minute to go I wonder if we could stand it down and have a little discussion.

Mr. Chairman: You have difficulty with this amendment?

Mr. Eaton: I may have, yes--the fact that we are saying everybody can discriminate in this case, as far as adult-only is concerned, except the private home dwelling. Basically where you are renting out a duplex upstairs and you have an outside entrance, do you mean the older couple who have that house and decide to put an apartment upstairs cannot decide they want adults only in the upstairs of their house, and yet you are allowing a whole apartment building to be that way? There is something wrong.

Mr. Chairman: Mr. Eaton, I think we have dealt with that partially already. I don't think your concern is specifically related to the amendment that is under discussion. You are really looking at subsection 3.

Mr. Eaton: If you are going to allow all the rest to have discrimination and not that case, I could support that amendment and say don't let anybody discriminate. Why should everybody but the individual property owner have the right. I find that very difficult to accept.

Mr. Chairman: Mr. Eaton, one thing you did say that I can agree with is that we are not going to finish this tonight.

The committee adjourned at 10:30 p.m.

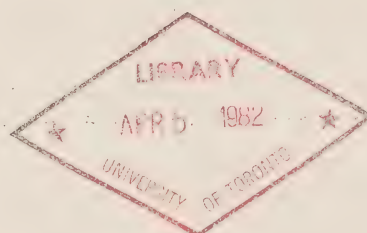


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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

BILL 7, HUMAN RIGHTS CODE.

WEDNESDAY, NOVEMBER 18, 1981





## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Dean, G. (Wentworth PC) for Mr. J. M. Johnson  
Gordon, J. (Sudbury PC) for Mr. Havrot  
Miller, G. I. (Haldimand-Norfolk L) for Mr. Riddell  
Renwick, J. A. (Riverdale NDP) for Mr. Stokes

Also taking part: Reid, T. P. (Rainy River L)

Clerk: Richardson, A.

Consultant: Stone A. R., Legislative Counsel

Researcher: Madisso, M.

### From the Ministry of Labour:

Armstrong, T. E., Deputy Minister  
Brown, G. A., Executive Director, Ontario Human Rights Commission  
Elgie, Hon R., Minister  
Hess, P., Director, Legal Branch

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, November 18, 1981

The committee met at 10:13 a.m. in room No. 228.

HUMAN RIGHTS CODE  
(concluded)

Resuming the adjourned consideration of Bill 7, An Act to revise and extend protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. There are two amendments. The government amendment numbered section 21 was handed out yesterday. There is an numbering error in that and a new one has been handed out today numbered section 20. So the one that was handed out yesterday as section 21 should be section 20. It can be thrown away and replaced with the one handed out this morning.

An hon. member: It is the same amendment, just a different number.

Mr. Chairman: The correction is in the numbering. Also, you were given an amendment yesterday numbered section 24. It was a two-page one. That can be thrown away and replaced--it is a numbering correction again--with one handed out today numbered section 21.

Mr. Renwick: I'm confused. I have these papers from last night. I can throw away this section 24?

Mr. Chairman: You have a 20 and a--

Mr. Renwick: I have a 21.

Mr. Chairman: Fine. I would like to carry on from where we adjourned last night, which was on the amendment to delete section 20(4).

Mr. G. I. Miller: I think it was left last night that the Minister was going to review it, or am I mistaken?

Hon. Mr. Elgie: No, the government's position remains as stated extensively last night. We oppose the amendment.

Mr. G. I. Miller: Then I guess there is probably no further discussion on that. If the government has made that decision, we are going to have to live with it.

Mr. Renwick: I hate to try to sum up what I understand it to mean. I understand it to mean that all the buildings that meet these tests can be adult-only buildings and there is no intention to protect the rights of families with children as far as accommodation is concerned.

Hon. Mr. Elgie: Mr. Renwick, I think we went over that at some length last night. You will recall that I read to you the conclusions reached by Life Together, following an extensive two-year review of human rights issues. The authors concluded the issue was primarily one of availability of suitable housing accommodation. That remains the government's position. We know, as you do, it is a very difficult problem to balance rights in society. It is our view we cannot support the amendment.

Mr. Renwick: I guess I should make just one brief comment. The availability of accommodation at the time the report Life Together was put together is quite a different question from the availability of affordable accommodation for families in Ontario today.

We will not tolerate the policy of the government that gives this wide-open right to have all the buildings and condominiums meeting these tests to be open to be designated as adult-only buildings, nor are we prepared to leave it to the policy of this government or the federal government to provide affordable, adequate accommodation for families. We will support the proposed amendment to delete section 20(4).

Mr. Chairman: Are we ready for the question? Those in favour of the amendment to delete section 20(4)? Opposed?

Motion negatived.

Section 20(4) agreed to.

Mr. Chairman: I would like to go back and pick up section 16, which was stood down yesterday.

On section 16:

Hon. Mr. Elgie: Ms. Copps and other members raised some concerns about some of the wording in section 16. This morning, we have distributed a reworded section that I think quite explicitly sets out the position of the government. Members may want to take a moment to refresh their minds about the new amendment. The word "obstructed" that troubled some members was reviewed, and we think we have reworded it so that any confusion that might arise from the word "obstructed"--the possibility was raised that this could be some sort of voluntary or deliberate obstruction--has been eliminated.

10:20 a.m.

I do want to say that the intention of the section remains the same. The intention is this, and we think it says it very clearly, that where the only issue is access and where the person is found to be incapable of performing or fulfilling the essential duties or requirements, there is no infringement.

Nevertheless--and I view this as a major public policy departure from usual legislative practice--even though the commission determines there is not an infringement and does not want the appointment of the board of inquiry because of the



application of subsection 1, it may use its best endeavours to effect a settlement. In other words, it opens the avenue of conciliation even in the absence of an infringement.

The other thing I wanted to be certain of, and I am now, is that if under 16(1)(b) a person is deemed to be capable of fulfilling the essential duties or requirements, and an agreement cannot be reached at conciliation, then that is a matter that can be put to a board. I believe this section now clearly and specifically says that.

I do not know if you want it read into the record by one of the members so that it is formally substituted for the amendment that was introduced last night. Probably someone should read it into the record formally.

Mr. Chairman: I think it should be read in as well.

Mr. Stevenson moves that section 16 of the bill be struck out and the following substituted therefor:

"16(1) A right of a person under this act is not infringed for the reason only (a) that the person does not have access to premises, services, goods, facilities or accommodation because of handicap, or that the premises, services, goods, facilities or accommodation lack the amenities that are appropriate for the person because of handicap; or (b) that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

"(2) Where, after the investigation of a complaint, the commission determines that the evidence does not warrant the appointment of a board of inquiry because of the application of subsection 1, the commission may nevertheless use its best endeavours to effect the settlement as to the provision of access or amenities, or as to the duties or requirements."

Mr. Renwick: Mr. Chairman, we will not accept the proposed amendment. It is regressive for the following reasons: The provision of subsection 2 for practical purposes directs the commission to determine that there be no board of inquiry because of the application of subsection 1. Then there is an automatic exclusion of the provisions of section 38 of the bill, section 40 of the minister's bill, with respect to both access and the accommodation or adaptation of the equipment to permit the handicapped person to perform the essential duties.

Even what exists in the present bill is preferable to this amendment. I can see no basis for it at all, when the only body that can direct some steps towards reasonable access and some steps toward reasonable adaptation of the work environment to permit the person to perform the job, is going to be excluded by this amendment. It is extremely regressive and I cannot understand what the pressures were on the minister to have this amendment before us.

We heard in the representations before us any number of people complaining about the power of boards of inquiry to provide for adaptation of and access to the work place. The minister by

this amendment is, for practical purposes, making those provisions inoperative. I do not accept his argument that you can hang all that much on the word "only" in the amendment before us.

Perhaps I should recap what section 38 says. Where a right is infringed and the contravention is on the ground of handicap, the board, in addition to an order under subsection 1, may make a finding as to whether or not "(a) access to or use of the premises or facilities of the party who is found to be a contravener is obstructed for persons having the handicap of the [complainant]; or (b) the premises or facilities of the party who is found to be a contravener lack amenities appropriate for persons having the handicap of the [complainant]; and [when the board makes the finding] the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures as will remove the obstruction or provide the amenities or any part of them as are set out in the order."

Then it goes on to say that in addition to the powers, where there is an infringement on the ground of handicap, the board, in addition to any other order, may make a finding as to whether the equipment or essential duties of the employment could be adapted by the party who is found to be a contravener to meet the needs of the person whose right is infringed and where the board makes the finding, "the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures...as will meet such needs and as are set out in the order."

I do not know why the minister has caved in on those very progressive and advanced provisions. There are adequate protections for any contravener in the case of the adaptation and access. The limitation to undue hardship and costs in both cases is quite an adequate limitation on the board of inquiry to come to a fair and equitable decision.

What I am simply saying is this amendment rules out, for all practical purposes, the use of those provisions in the bill.

Hon. Mr. Elgie: I dealt with this last night in great detail and I do not say this with resentment, just with I think a degree of legitimate confusion, because I do not in any sense look on that amendment as altering what I have said publicly on many occasions, what the government's position is, nor indeed, can a proper reading of the reading of the reprinted bill, section 40, or the old bill's section 38, lead anybody to any other conclusion.

There has been no pressure on me to introduce this amendment. As I said last night, it is a clarifying amendment because it was our view on review that it was not adequate simply to put the policy position in a remedial section but rather it should be in the offences and exemptions area as well.

Indeed, I would suggest, Mr. Renwick, that instead of wrongly defining this as a regressive amendment, it adds some things that were not there, because it is my view and the view of our counsel, that under the existing section 16 the commission, in the absence of a finding of discrimination, would not have been able to use its

st endeavours to affect a settlement. Rather than detracting, it my view that it clarifies and enhances and, indeed, introduces a w area of public policy which was not clearly delineated before. reject your point of view.

Ms. Copps: Do you have a copy of yesterday's amendment? I ve got it here in somewhere in this stack of papers.

Mr. Renwick: Here is one of yesterday's.

Hon. Mr. Elgie: We have taken your comments about bstructed" as valid ones, Ms. Copps. We have also added the term because of handicap" twice in clause (a), and we have reworded ection 2 so that it is a better delineation of what the policy issues are.

0:30 a.m.

Ms. Copps: It certainly seems to be an improvement over yesterday's wording. Why have you included "performing or fulfilling essential duties"?

Hon. Mr. Elgie: That was in the previous one too.

Ms. Copps: But in the previous amendment you got into the issue of "essential duties or necessary requirements," and here you tell us about it a little. I wondered why.

Hon. Mr. Elgie: Frankly, it was the view that "essential duties or necessary requirements" probably was more in keeping with the symmetry of the bill rather than introducing a new word; so it is "essential duties or requirements." It was suggested to me by one of the members of the coalition--

Ms. Copps: I understand the notion of telescoping "essential duties and requirements," but "performing or fulfilling" seems to me to be rather redundant from a semantic point of view.

Hon. Mr. Elgie: It is our view that "performing" relates to employment primarily and "fulfilling" has a broader meaning that can go into those areas beyond employment.

Ms. Copps: Did you make a decision simply to go with subsection 1 in general rather than 1(a) specifically? In part II, in section 16(2), I have a question about the notion that members of the commission may differ on their interpretation of "essential duties," and I wonder whether you have made a decision about 16--

Hon. Mr. Elgie: I did discuss that and review it. The commission has to make these decisions on each case, Ms. Copps. They have to make a determination as to whether it is a matter that the evidence warrants appointing a board of inquiry. You are suggesting, if there is a tie vote in the commission, that they refer it to a board of inquiry. I say what you are suggesting is that even though they make a determination that it is not infringed--that is what they do all the time, determine whether there is an infringement of the act and make a decision as to whether it goes to a board of inquiry. Those are duties they



perform in every complaint.

Ms. Copps: I understand that. That is why I am curious as to why you spelled it out specifically in this section and you have not spelled it out in other sections. When we go into sections, part I and II, we do not specifically say if is not a finding--

Hon. Mr. Elgie: As I said earlier this morning, it is a little unusual to give the commission some authority, in this case, to conciliate, even where they have not found an infringement because of the application of subsection 1. Therefore, it was our view it should be spelled out in this section.

Ms. Copps: We will still be proposing our amendment as suggested, but I do not have any further comment. Taking the best of two evils, this amendment is better than yesterday's.

Hon. Mr. Elgie: Maybe less evil because you are ingenious. I think we understand what you are saying.

Mr. Renwick: I move that section 16 be amended by adding thereto a subsection as follows: "For the purpose of this section, the term 'handicap' includes the use and availability at reasonable cost of such auxiliary aids which permit or enable the essential duties to be performed."

Ms. Copps: I thought we were going to entertain the official opposition's amendment first, because I wanted to make an amendment.

Mr. Chairman: I thought I was getting close to voting on 16, and I guess Mr. Renwick sensed that anticipation. Do you have amendments for 16?

Ms. Copps: I have two amendments that were tabled with you, I believe, some time ago. They relate to--

Mr. Chairman: Let us hear them all.

Ms. Copps: Obviously the wording now would be somewhat altered since the new minutes have been brought in, but I would move section 16(3): "In determining whether a right under part I to nondiscrimination because of a handicap is infringed, the absence of reasonable accommodation for the handicapped is not a defence." That is my first amendment.

Obviously we have gone through the arguments on access, we have gone through the arguments on section 9, and I do not want to keep repeating the arguments, but I believe the concept of reasonable accommodation is a critical one to enshrine in the legislation. It is in this regard that we have moved that amendment to section 16. You should have copies of it, but I have just been reading the first part. In other words, instead of the first part, section 16(2) would become 16(3) and this--

Mr. Chairman: You are moving these amendments to the old 16, are you?

Ms. Copps: Yes.

Mr. Chairman: We had better get it straight so we know where to--

Ms. Copps: Let the amendment stand as it is written here. It is a lot less confusing than going on the new amendment.

Mr. Renwick: Mr. Chairman, I have only one concern, that if we put section 16, it would be gone, and I want to see our amendment moved. I do not know what the procedural thing would be to do--

Ms. Copps: We vote on this amendment, then we vote on the new amendment, then we--

Mr. Chairman: In view of the fact that the government amendment is a replacement of the whole section and what not, I am prepared to stand it down and deal with the opposition amendments. Is that a reasonable way to proceed?

Let us deal with your first one, Ms. Copps.

Ms. Copps: Well, the whole first amendment will stand. I move in section 16 that the bill be amended by inserting at the commencement thereof, "Subject to subsection 2," and I further move that section 16 be amended by adding thereto: "In determining whether a right under part I to nondiscrimination because of a handicap is infringed, the absence of reasonable accommodation for the handicapped is not a defence."

Most of the discussion has been reiterated a number of times and I really do not want to go into it again. Nevertheless, I think the notion of reasonable accommodation should be enshrined in the code.

Mr. Renwick: I will just say that, for all of the reasons that have been stated, I will support the amendment.

Mr. Chairman: On the question of the amendment, all in favour? Opposed?

Amendment negatived.

Ms. Copps: If Mr. Renwick would like to go ahead next, I have another watered-down amendment. I don't know whether I can propose two amendments. Do you want to go ahead, and then I will go after that?

Mr. Renwick: Sure, we will have an amendment party here.

Hon. Mr. Elgie: You had two amendments to section 16 in here, you know.

Ms. Copps: Already, yes, but they will--

Mr. Chairman: Mr. Renwick, you do not have a copy of this, I guess.

Mr. Renwick: I'm sorry, I don't.

Mr. Chairman: Mr. Renwick moves that section 16 be amended by adding the following subsection thereto:

"For the purpose of this section, the term 'handicap' includes the use and availability at reasonable cost of such auxiliary aids which permit or enable the essential duties to be performed."

Mr. Renwick: Mr. Chairman, my only comment is that we have been quite unsuccessful in getting any acceptance by the government of any general statement of reasonable accommodation for handicapped people. What I am at least trying to do in this amendment is to get a very limited accommodation.

The example I used last night, which could be multiplied many times in specific instances, would mean that if a person performed the essential duties of the job with a braille typewriter, the braille typewriter should be provided. So you have the person, the handicap and the compensatory, auxiliary aid, which is available so that the person can perform the essential duties.

10:40 a.m.

If you do not have that amendment, then the person is excluded under section 16, both in the original bill and in the amendment proposed by the government, by virtue of the handicap from performing the essential duties and there is no flexibility to take into account the availability of what I have termed auxiliary aids to permit the person to perform those duties.

Again, I would have thought it was an obvious part of the desire to bring handicapped people into the work force on reasonable terms. But the rest of the arguments have been made several times on the more general question of reasonable accommodation, which was defeated on a vote.

I would ask the committee to at least consider this very limited amendment.

Mr. Chairman: Any further discussion?

Hon. Mr. Elgie: No, I think we have addressed this before.

Mr. Chairman: All in favour of Mr. Renwick's amendment?  
All those opposed?

Motion negatived.

Ms. Copps: I have another amendment to section 16.

Mr. Chairman: Ms. Copps moves that: "A right to nondiscrimination because of handicap is not infringed for the reason that in the particular circumstances, the handicap renders the person, after a low cost accommodation has been made to his handicap, incapable of performing the essential duties attending



the exercise of that right."

All those in favour of Ms. Copps's amendment? All those opposed?

Motion negatived.

Mr. Chairman: I think we are ready to vote on the amendment moved by Mr. Stevenson.

All those in favour of Mr. Stevenson's amendment? All those opposed?

Motion agreed to.

Mr. Chairman: I think we are at the new section 21, the old 20. Did we not have to pick up something to tie in with this?

Hon. Mr. Elgie: Ms. Copps and other members have raised concern about the definition of "group insurance" in section 9(f) referring only to--I have not got the old one here, but I think it referred only to employee; I will just check on that--it excluded an employer.

A new section 9(f) will be introduced by the government that does not exclude in the definition any type of group insurance, be it employee, single contract, or employer. Then that will be picked up in the new sections 21 and 24 where, on the one hand, when we are dealing with employee group insurance, employers will be excluded and, on the other, where we are dealing with employer group insurance, employees will be excluded.

If you want any further explanation of that--I might say both counsel, Mr. Stone and Mr. Hess, now agree it was a reasonable suggestion--it does make it a little clearer. Although it does not change the substance of it, it makes it clearer, and I think it was a good point.

Mr. Chairman: Mr. McNeil moves that clause (f) of section 9 of Bill 7 be struck out and the following substituted therefor:

"(f) 'group insurance' means insurance whereby the lives or wellbeing or the lives and wellbeing of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person."

Amendment agreed to.

Mr. Chairman: Mr. Lane moves that section 20 of the bill be renumbered as section 21 and further moves that the section as renumbered be struck out and the following substituted therefor:

"21. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance, or a contract of group insurance between an insurer, an association or persons other

than an employer, or a life annuity differentiates or makes a distinction, exclusion or preference reasonable and on bona fide grounds because of age, sex, marital status, family status or handicap."

Ms. Copps: I do not think I have a copy of that amendment. That is also a new addition today, eh?

Hon. Mr. Elgie: No, that was given to your party yesterday.

Ms. Copps: The last part that the member read into the record is not what is in the bill.

Hon. Mr. Elgie: No, but they were handed out last night and then they were rehandd out this morning. It should start section 20 at the top.

Ms. Copps: Do you have another copy of that?

Hon. Mr. Elgie: This is the one you were given yesterday.

Ms. Copps: Yes, I had it from yesterday, but--

Hon. Mr. Elgie: Yes, it is different, though. Today's is different.

Mr. Chairman: The only difference is that number. It should be 20.

Ms. Copps: Yes. Can I have that one?

Mr. Renwick: Mr. Chairman, I just need some procedural assistance. I want to move the deletion of the section.

Mr. Chairman: Okay. That seems pretty straightforward. Just a minute. We are moving that section 20 be renumbered--

Mr. Renwick: As section 21 and the following substituted therefor.

Mr. Chairman: Again, I think we are in a situation where, because a government amendment is changing, if we deal with it, it probably finishes it.

Mr. Renwick: I think so.

Mr. Chairman: So we can accept that ahead of time. Do you have amendments too, Ms. Copps?

Ms. Copps: I have an amendment that was tabled with Mr. Richardson, but just this morning.

Hon. Mr. Elgie: Is that 24 hours? We cannot move it.

Ms. Copps: I know. Actually, I had it yesterday, but I was so tired when--

Hon. Mr. Elgie: It seems to me I recall somebody mentioning 24 hours--

Ms. Copps: This is merely housekeeping.

Hon. Mr. Elgie: In the spirit of co-operation I sense here this morning--

Mr. Lane: Mr. Chairman, on behalf of Mr. Johnson who cannot be with us this morning, I would like to bring to your attention a letter he received, signed by one Mr. Harry Beatty, requesting some changes to section 21 and section 24(3). I believe there is some knowledge of this letter, but I'd like to have some reply to it.

10:50 a.m.

Hon. Mr. Elgie: Mr. Chairman, I think the recommendation of the Association for the Mentally Retarded is that "reasonable and bona fide" be eliminated and that the words "increase the risk" be substituted therefor. That will be discussed in the debate and will be available for Mr. Lane to refer on to the writer of that letter.

Ms. Copps: Well, he will be able to support my amendment then.

Hon. Mr. Elgie: He is raising this for information, without 24 hours' notice.

Mr. Chairman: Okay, Ms. Copps, what amendment are we on here?

Ms. Copps: The amendment I have suggested is basically a return to that very issue, and that is that we strike out "on bona fide and reasonable grounds because of age, sex, marital status, family or handicap" and insert in lieu thereof "where the age, sex, marital status, family or handicap substantially increases the risk." That it is housekeeping.

Unfortunately, we did not have the chance to thank him for his presence last night, but his comments must have had some impact on the minister, because the amendment that came in on section 16 was, I think, in some part due to the contribution made by David Lepofsky, who flew up from Harvard last night for the reading of the bill. He has actually suggested this amendment to our caucus on the grounds that the notion of reasonable and bona fide grounds, unbeknownst to me, "reasonable" is simply whatever the prevailing situation is in the marketplace at present. He is of the opinion--I will read the statement he has been kind enough to draw up for me:

"If the insurer charges a disabled person a double premium because everyone in the industry does so, despite the lack of actuarial data, then this is fine under the bill. In defining 'reasonable and bona fide grounds,' the board of inquiry or court can have no regard to the most important factor of all in insurance, namely, whether the disability makes the insured a greater insurance risk. The bill makes risk relevant only vis-à-vis



employee disability programs. Statutory interpretation principles provide that as a result, risk is irrelevant in all other insurance situations, such as those set out here. This is basically a licence to discriminate."

Those are Mr. Lepofsky's words. I think the notion is that bona fide and reasonable grounds allow the present market situation to prevail, and the position he puts forth--and I think it merits considerable consideration--is the notion that a person should be subject to substantially increased risk if there is going to be a substantial increase in, for example, premiums.

The notion of the risk substantially defines or sets out the fact that there has to be a substantial risk increase and not a simple risk increase, which can be determined in law. So the new wording would certainly make the revised section 20 much stricter in terms of non-employee insurance programs.

We know the minister has already set aside that notion in terms of employee programs, but in non-employee programs, if we allow "reasonable and bona fide" to be the determining words in the motion, then basically what we are saying is that market values at present will prevail and, therefore, if you have a situation where a disabled person does not represent a substantial risk, he or she can still be charged, for example, double the premiums.

If we approve the amendment "where age, sex, marital status, family or handicap substantially increases the risk"--there is a risk table based on disability that has been developed by the insurance industry; so they do have a benchmark from which to operate. Actually, I have a copy of it up in my office, but I did not bring it down. But there is a benchmark set up for disability where a substantial risk can be determined in certain situations, and we feel that should be the benchmark, and not the simple "reasonable" grounds that would allow the market as it presently exists to prevail.

Hon. Mr. Elgie: Mr. Chairman, if I could comment and then any other members who want to comment, first of all, may I just say that one of the changes in here that members will note is that under the old Bill 7 it referred only to "the right under section 3" and now it is "the right under sections 1 and 3." Section 1 was added because it was our view that section 3 might confine it to those who already had a contract of insurance, and that the offering should be involved as well. Therefore, section 1 was added

Second, I venture to propose that both counsel here at table today would not agree with the interpretation that has been given to the word "reasonable." It's our view that "bona fide" is a subjective test and that "reasonable" puts that test to an objective evaluation. I wouldn't be averse to having counsel comment on that if they wish.

Our concern is that this "bona fine and reasonable" does offer an evaluation from both points of view--bona fide and the objective reasonableness--and that putting in the term "risk" overlooks one other aspect of the whole section that deals with the quantum of the award, not only the risk that's involved.

For those reasons I don't think the government can accept the amendment. But in our view the spirit of the letter sent by the Metropolitan Toronto Association for the Mentally Retarded is really met with the terms "bona fide and reasonable." If the committee agrees I think it would be valuable to hear from both counsel on their view of what "reasonable" means in this section.

Mr. Chairman: I do not see any dissenters among the committee.

Ms. Copps: How would they respond to the notion that "reasonable" has been defined as the prevailing standard in the industry?

Hon. Mr. Elgie: That's what I want them to comment on. Mr. Hess and Mr. Stone?

Mr. Stone: I'm not aware of any special, highly structured meaning for that in the trade. As far as I am concerned, it's just plain English. There's no magic to be read into the term "reasonable"; it's the reasonable man rule for the reasonable, conscientious person faced with certain problems and the conscientious way he would work it out. "Bona fide" means simply "without ulterior motive."

Hon. Mr. Elgie: So it offers the subjective and the objective evaluation.

Ms. Copps: Well, if the notion of "bona fide" is subjective, then "reasonable" must be objective. It certainly would have to be more than the simple meaning in English, because I don't know how many times I have made an interpretation of the English language differently from someone else's. I would say that the strict semantic interpretation is a very subjective rather than objective thing. If you are saying that it's simply a semantic interpretation, I think that could be somewhat subjective.

Mr. Stone: I think "reasonable" is objective in the sense that it is the way another person who is a reasonable person would view it.

Ms. Copps: I don't want to get involved in a debate with legal counsel, but certainly what is reasonable to me in some instances may not be reasonable to my mother, for example.

Hon. Mr. Elgie: I don't want to get into an argument with your mother.

Ms. Copps: I just think the notion of what is reasonable to an individual is certainly very subjective; it's not objective, it's subjective.

Hon. Mr. Elgie: I would submit, from my recollection of the law, that the reasonable man concept does not involve what your mother would see as reasonable or what you would see as reasonable; it's a judicial interpretation, which involves the reasonable man acting conscientiously and going beyond simply--what was the other,

having ulterior motives or something?

Mr. Stone: "Bona fide" means without ulterior motives.

Hon. Mr. Elgie: Without ulterior motives. So it goes beyond "without ulterior motives" and gets into what a reasonable man or a reasonable person looking at a situation would determine. Mr. Hess, would you agree with that?

Ms. Copps: Just on that point: You said that the jurisdictional interpretation which was suggested to me by David Lepofsky, who, as you know, is currently studying law at Harvard, is that reasonableness is the prevailing standard in the industry and that this is the jurisdictional interpretation of reasonableness.

Hon. Mr. Elgie: I'm told that counsel do not agree with that. Perhaps, Mr. Hess, you'd like to comment as well.

Mr. Hess: I do not think that "reasonable" refers to a prevailing standard, because I have never heard the courts accept that in any test of reasonableness. It's a fiction, I guess, to say that there is such a person as a reasonable man, but the courts have had no difficulty with it for many, many years. I think it really means, "What would a reasonable insurer do in a particular situation with full knowledge and information about all the facts and circumstances involved?"

Your test of simply restricting this to a substantial increase in risk is very limited, I would suggest. I think you have put yourself completely in the hands of the insurance industry as to what is or is not, in the mind of an insurer, a substantial increase in risk, and I think that even in the amendment you propose you are falling into the argument you advanced against what is currently in the section.

11 a.m.

I would also like to call to your attention the fact that there are other reasons for differences and distinctions in the issuance of a contract of insurance other than risk. There is the matter of the benefits and the extent of the benefits, there is also, of course, the nature of the premiums based on those benefits and, of course, there is the risk. If you simply restrict it to risk, you may find that people who obtain insurance are paying for insurance coverage in a class other than the one they would find themselves in. So there are disadvantages to the proposal in my submission that you are advancing.

Ms. Copps: I think I may have discovered a sawoff--

Mr. Elgie: You're going to have to come closer.

Ms. Copps: --and that sawoff would be that rather than amend to exclude the notion of "bona fide and reasonable" why could we not include "where the age, sex, marital status, family or handicap substantially increases the risk" at the very end of the section? That way you would be doubly sure that you would be



offering protection to the disabled individuals and also that you would not be deviating from the standards present within the insurance industry.

Hon. Mr. Elgie: Again, you are tying it to risk, and that's what Mr. Hess was just telling you, that there's more than risk involved. It's our view that this more than adequately deals with the problem, and I think we have to stand by the amendment as proposed.

Mr. Eaton: I think I would be very concerned with a substantial increase in the risk, Mr. Chairman, because you get categories in the insurance where your group--say, 17- and 18-year-old girls--is a slightly higher risk than 18- and 19-year olds. You might not have a substantial increase in risk, but there is some difference there. Just so you can go on a policy difference you might have only \$10 or \$15 a year. The thing is that they're categories, and because of the accidents that happen--

Ms. Copps: I would be prepared to delete "substantially."

Mr. Eaton: You haven't got much left.

Mr. Chairman: Is there any further discussion on this?

Ms. Copps: What is the amendment, anyway? No, I have got it.

Mr. Eaton: Just striking out "bona fide and reasonable."

Mr. Renwick: Whatever the order is, perhaps, I would like to speak about the reason why I do not think there should be any exclusion for any reason of insurance contracts from the purview of the bill and therefore of the human rights commission.

Mr. Chairman: Can I just say that the order is either now or later but not both? Is that apt?

Interjections.

Mr. Chairman: Proceed, then.

Hon. Mr. Elgie: You're so logical, Mr. Chairman. You'll destroy this whole committee.

Mr. Renwick: First of all, the commission is involved. This is not an exclusion of the commission in the first sense because the commission has to determine the meaning of those phrases that differentiate or make a distinction, exclusion or preference reasonable and on bona fide grounds because of age, sex, marital status, family status or handicap.

Ms. Copps tried to fasten down this question of reasonableness. Let me for a moment set aside the fact that the insurance industry in Ontario is not engaged in pursuing ulterior motives and that the "bona fide" therefore doesn't add anything except by way of extra precaution. I think it's fair to say that the industry indicates that it always acts in good faith.

The problem is not the question of good faith; the problem is the reasonableness at the particular time at which the commission is going to have to decide, because otherwise, if it's unreasonable, then of course the insurance industry doesn't have the protection of this section. So the commission is going to be asked to make a decision on the reasonableness of the discrimination.

We can forget the gobbledegook about "differentiates or makes a distinction, exclusion or preference": that means a licence to discriminate, provided it is reasonable. "Reasonable" is not the man on the street or the man from East York, even if he's the minister; it's an industry that believes itself to be sophisticated, and it can only be reasonable in terms of a sophisticated industry.

The problem with the industry is that it has been making judgements and classifying risks as substandard or not insuring them at all on the basis of medical judgements rather than on the basis of actuarial information in such a way that over time they have penalized a large number of people.

Mr. Eaton is frowning. What I'm trying to say is that there have been people in Ontario who have been classified as substandard risks because of medical impairment over a period of time who have paid substantially higher premiums, when now the industry has decided that they are not substandard for insurance purposes. I'm not arguing bona fides; I tried to eliminate that at the beginning.

The advancing art, the introduction of information retrieval systems and the computerization of the industry and various sophisticated studies they have done have now determined that a large number of people who formerly were charged significantly higher premiums should no longer be so rated.

We tried to correct the balance, and the committee of this Legislature spent a great deal of time talking about this whole question with the industry when we did the study on the life insurance industry in all its aspects and at considerable risk to ourselves, because we were trying to get to the bottom of a basic problem in the industry that no one would address or, if they were going to address it, they were going to do so in their own way over a lengthy period of time.

Let me just read what the committee recommended. What the industry says is that they combine art with science and make a judgement. What they mean by the science part of it is what is actuarially sound; the art part of it is the medical judgement, usually based on inadequate information. The committee went on to say:

"While the committee recognizes that the past practice of combining art with science in underwriting was the best approach possible to developing a risk classification system, the committee believes that the recent trend to statistical studies of risk factors signifies that the industry is able to assume a fundamental redirection in its approach to underwriting. This redirection is

oward increased support of industry underwriting practices with sound statistical evidence of the relationship between risk factors and life expectancy.

"The committee strongly advocates such a redirection. The committee therefore recommends that the life insurance industry in its underwriting practices must start with the premise that everyone is a standard risk and must only rate a person as substandard or deny coverage on the basis of personal risk characteristics if those characteristics can be proven systematically to require that an extra premium be assessed.

"The committee contends that the life insurance industry must reduce its reliance on medical judgement and on the judgement of the underwriter. These conclusions of the committee are not intended to eliminate entirely the role of judgement in underwriting, but they are intended to reduce that role as much as possible."

Nothing could be clearer than what we attempted to say to the industry. This licence to discriminate in the insurance industry is a satisfactory way of dealing with the insurance industry provided they have the statistical evidence to warrant it. No one is quarrelling with that. The actuarial science and the judgements based on that statistical information are used as the basis of life insurance.

11:10 p.m.

But we are saying that the commission must, at any time, take to be reasonable whatever the standard practice of the life insurance industry may be at a given time. They must do so because they have no other test except to go to the industry and ask them; the industry is not going to say its practices are unreasonable. Secondly, the commission will not have the skill and ability to deal with these matters in a sophisticated way.

What may be reasonable to the man on the street is not reasonable if one attempts to carry out the kind of in-depth, sophisticated judgement which we on the select committee tried to bring to bear on the problem. I do not think that there is any question that we are not going to get to the root of the problem of persons with handicaps, about which I am speaking mainly on this point, in the insurance industry unless the commission has the capacity and the ability to make the judgement.

I do not believe they are going to have that capacity and the ability, and I do not believe they should be in a position where they should treat contracts of insurance or whether if it comes under section 1, any differently than any other contract. If it discriminates, and we took out all of those words that were involved in the definition and left the term "discrimination" undefined so that those who are exercising judgement could say, "Is there a discrimination?" In my view, I think that is all I need to have to say about the broad range of insurance that is covered under life, disability, accident or sickness or group insurance.

I will be interested when we come to section 21 in the



bill--section 24 in the minister's version of the bill--about being in the hands of the insurance industry. As I read it, we are substantially increasing the risk with respect to the very kinds of insurance where the handicapped person is significantly discriminated against because of the handicap. That is the field of accident and disability insurance.

The other reason why I think the insurance industry should not be excluded from this provision is that in automobile insurance--again the recommendation of the select committee was that there was absolutely no basis for discriminating or classifying risk with respect to driving on the basis of age, sex and marital status. They are irrelevant considerations. It does not matter what the statistical base of the casualty insurance companies are; they are unable to support those particular classifications.

Yet you know as well as I do, that the commission will say that it has always been done, that is the way it is going to be done and it is quite reasonable. Someone will file with them the statement of the minister, minister Drea as he then was, where he goes into this whole problem and you will get assurances from the industry that, yes, they are working on it and over time they will gradually eliminate those irrelevant factors.

But they cannot justify any longer classifying drivers on the highway by reason of age, sex or marital status. It is inequitable and it is discriminatory in the premiums which are charged.

It seems that the ministry, the government, has taken the easy way out. They put in this phrase "reasonable," taking my view that the insurance industry does not act in a non-bona fide way so the bona fide does not mean anything. They said it is too difficult and specialized in area. We will leave it all to the superintendent of insurance and the insurance industry, except for this little tag end that the commission may at some point be asked to make a determination about whether or not the discrimination is reasonable and they will not have the capacity and the ability to do it.

So concomitant with my request that the section be eliminated, you also have to provide on that commission, people who are knowledgeable in the insurance industry or you have to provide some method by which the commission can call in aid of its judgement when it is called upon to make these distinctions, persons who are experts in the industry--not only expert in the industry but able to appraise objectively the reasonableness of the restriction and the relevance of the classification system which is being used.

When you consider the size of the insurance industry, when you consider that in many areas it is either compulsory or essential for anyone planning his life, then for us to touch upon the insurance industry only in this limited way, in my view, is totally wrong.

I may say that, turning to Ms. Copps's amendment, no matter what words you strike out, I would be very concerned about the phrase "substantially increasing the risk" as applicable to any

test included in this bill. I hope when we come to section 24 in the minister's bill and section 21 in the bill before us, that that problem can be addressed at that time. I was interested that counsel to the minister on this bill indicated that, using those phrases "substantially increasing the risk" would be putting us in the hands of the insurance industry. I hope the same argument holds true when we get to section 21 of the bill.

I am not going to read any more out of the select committee report. It is all there. It is a lengthy report. It talks about medical impairment. It talks about age. It talks about sex. The select committee report on automobile insurance talks at length about the irrelevance of the classification of automobile insurance premiums on the basis of age, sex and marital status. Who on the commission is going to say that it is unreasonable if the insurance industry comes in and says, "Why of course it is reasonable." There are few if any critics of the insurance industry and it is the most powerful lobby in the province of Ontario in all of its aspects.

The argument that the insurance industry makes is, "Well, we will have our human rights code but we want it in the Insurance Act." If you look at the Insurance Act, it is totally inadequate in modern terms. Every now and then, they have stuck in a little clause designed to protect the rights aspect of insurance contracts. It is totally inadequate, and I am quite certain if this committee were to call the superintendent of insurance, he would not agree with my word "totally" but he would certainly indicate that it was an area in the Insurance Act which requires amendment.

The government has not indicated in any way that they consider it essential that the Insurance Act be amended. If that is the route they want to take on this question, but at the present time to leave that whole field of insurance contracts on the basis of simply this clause proposed before us, is to my mind, to deprive immense numbers of people in Ontario of the protection of the human rights code.

So those are the reasons why I moved the deletion and why I would like, at some point, the opportunity to vote on that particular deletion.

Mr. Chairman: Anything further on Ms. Copps's amendment? Okay, ready for the question? Moved by Ms. Copps that the willingness to change several things that she has moved--

Ms. Copps: Let the thing stand as is and get it over with.

Mr. Chairman: All in favour of that amendment? Opposed.

Motion negatived.

Mr. Chairman: Moved by Mr. Renwick that the whole section be deleted. All in favour? Opposed?

Motion negatived.

Mr. Chairman: Shall--I do not know how to refer to it--the new section 21 carry?

Section 21 agreed to.

Hon. Mr. Elgie: It was section 20 before, Bob. It is now the new section 21.

On section 22:

Mr. Chairman: Mr. Eaton moves that section 22(1) of Bill 7 be struck out and the following substituted therefore:

"The right under section 4 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination."

"Application for employment

"(2) The right under section 4 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

"(3) Nothing in subsection 2 precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this act."

"(4) The right under section 4 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer."

Mr. Renwick: Can I have a copy of that amendment? I do not have one. Is that the way it is in your bill?

Hon. Mr. Elgie: That is the way it is in the reprinted bill.

Mr. Renwick: Oh, thank you.

Hon. Mr. Elgie: I may say, Mr. Chairman, just by way of comment, that what we endeavoured to do here is to bring all of the matters related to advertising for employment, applications for employment, questions at interviews, all into one section for greater clarity.

You will recall there has been some confusion about that. It was brought to our attention by groups and individuals that have appeared before the committee and also there was great--and I think with some degree of reasonableness--concern expressed that the old section 22 made it a prerequisite that certain groups should be interviewed regardless of whether or not they were otherwise the best qualified people to, for example, be on a short list.



What we have endeavoured to do in this section now, is to gather it all together to make it very clear that those sorts of questions can be asked once a short list has been determined on the merit of the individual vis-a-vis the requirements of the job and vis-a-vis the capabilities to perform the job.

The employment agencies section was added, not because we really felt it needed to be because it was our view that section 8, indirect discrimination, really covered that as well. But we thought for greater public certainty that there is no suggestion that we are intending to alter or remove the existing employment agency section, that it should be restated in here for clarity. It was in the previous code and we carried it through into this section.

Ms. Copps: I just wanted to say that I think this amendment is not pertinent because the original section certainly did eliminate the possibility of developing a short list and I think that is one reason why you changed it.

Hon. Mr. Elgie: That is what we tried to eliminate.

Ms. Copps: I think you have come up with a good compromise here.

Hon. Mr. Elgie: Would your mother agree?

Ms. Copps: I will have to ask her. I am sure she will. She will probably agree with a lot of your notions.

Mr. Chairman: Section 22(1) of the bill.

Ms. Copps: Can we carry it?

Motion agreed to.

Mr. Chairman: Mr. Renwick, do you have any objection to that section as revised?

Mr. Renwick: I am sure I do. I have not found it yet.

Hon. Mr. Elgie: You have not read it yet, but you know you object. Give a guy one provincial election and he goes crazy.

I do not know if you were listening but basically what we have done is to bring the advertising, the applications, the right to question, that is, when you reach a short list to ask questions that are about prohibited grounds and, finally, to reinsert the employment agency section, not because in our view it may not already be covered under section 8, indirect discrimination, but for greater clarity and certainty so that no one is under any illusion that we are removing it or that there is a perception that we are removing the employment agency section.

Mr. Renwick: I have no problem with section 22(1).

Mr. Chairman: On section 22(1), shall that carry? Carried.

Mr. Renwick: On the second one, the minister will recall--I was hoping that my colleague for Sudbury East (Mr. Martel) would be here--the application form for employment that caused him so much concern. I have all of that material.

Hon. Mr. Elgie: I remember the case very well. It was a case where a number of questions were asked about very personal aspects of one's physical wellbeing. If I might just refresh your memory, my statement at the time was that those questions are indirectly trying to achieve what one could not achieve directly by asking the specific question. I felt that this section dealt with that matter.

Mr. Renwick: Well, that is what I--

Hon. Mr. Elgie: Section 22(2). My belief deals with what you cannot do indirectly what you cannot do directly.

Mr. Renwick: All right.

Hon. Mr. Elgie: Those questions were aimed at finding out certain things--in my view as a humble physician, and not in my role as the Minister of Labour--to determine whether there were any psychological problems, whether there were any chronic long-standing problems that might result in absenteeism.

Surely, the appropriate question is, "Is there any reason why you cannot fulfil your duties on a regular basis or as otherwise required by the job?" If a medical statement to verify that is required from a physician, that is reasonable. But to inquire into one's personal physical hygiene and other problems, in my view, would be indirectly trying to qualify people. I think this section catches it. Mr. Hess, would you agree?

Mr. Hess: Yes. What we have done, Mr. Renwick, this was in Bill 7 and was formerly section 22. That has now been replaced by subsection 2 of this proposed amendment, and you will notice that what has been done is that we say that "equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by," and then we use all of the prohibited grounds of discrimination. Those would include handicap, age, marital status, family and all the rest of it. It is much broader in scope than the former section 22.

Mr. Renwick: I appreciate that. I appreciate that it is much broader and that you have indicated you thought it covered it. I have great difficulty when I look at the questionnaire to indicate to myself that this application uses only prohibited grounds of discrimination and otherwise is nonintrusive on the rights of people.

I know the minister's comments and I know the questionnaire caused much concern at the time. I recognize the statement that he made, but my colleague raised with me again this whole matter in 1980 because of his continuing concern about it.

11:30 a.m.

At the end of last year he said, "You will recall several weeks ago I raised the matter of an employee questionnaire being used by Canadian Blower, a Kitchener firm. I found the form highly offensive, totally unacceptable. The Minister of Labour indicated that while he agreed, he was not prepared to act immediately as he did in fact want to see the provisions under the human rights legislation which would prevent the disclosure of this sort of confidential information." He then goes on to explain that he has not looked at the bill, but that he wants me to look at it, and thanks me for it.

Hon. Mr. Elgie: I do not think one can foresee all of the various sorts of medical or other questions that could be asked in order indirectly to get at some particular problem that one is indirectly trying to qualify the position on the basis of that information.

Mr. Renwick: How do you claim that applications for employment will not continue to have past medical history of the kind set out in the--

Hon. Mr. Elgie: Because most of those things, as I recall--I have not read it for several months--but as I recall, reading it at that time, what is really being attempted in that questionnaire is to find out whether the person has or has had or is believed to have or have had a physical disability, a mental condition, a mental retardation problem, all those sorts of things. That is indirectly, in my view, under the definition of handicap, the information that is trying to be obtained in that medical application form.

Mr. Renwick: You are saying to me that "because of handicap" means the definition that is in the bill would, in your judgement and in the judgement of your expert advisers in this field, rule out this kind of application. I do not believe it myself and I do not pretend--I am not saying that argumentatively, I am simply--

Hon. Mr. Elgie: To the extent that disability is a prohibited ground of discrimination in this bill, what I am saying is that in so far as the range of matters dealt with in this bill is concerned, it is my personal view that subsection 2 does achieve what we want to set out and what we want to do with regard to the questions raised.

There may be some other things that are beyond the purview of this bill, although I cannot think of any at this moment, that are not covered. But it is my view that we cannot go beyond the purview of the relevant grounds of this bill, and that directly and indirectly, in the face of handicap being a prohibited ground, with the definition of handicap being broad enough to mean, not only what you have but what you are perceived to have or have had, there would automatically be included in that subsection.

Ms. Copps: Can I suggest something, that we possibly set



this down? If Mr. Renwick wants to suggest a different wording he could do so at another time but--

Hon. Mr. Elgie: I would not mind, except that this has been around for over a year now--

Ms Copps: I personally think it covers it.

Mr. Renwick: My problem is I do not know how to draft it to say something else.

Hon. Mr. Elgie: If you are saying that someone, for instance, should not ask any question about sex life, that is beyond the purview of the bill, for example, I think, but if their inquiry is into--

Mr. Renwick: That is what worries me.

Hon. Mr. Elgie: That is beyond the purview of this bill, but if some of the questions are like a chronic discharge from nipples and all that stuff, the sort of the questions that were asked, are aimed at determined likely absenteeism and surely what this is saying--

Mr. Renwick: The headings--I am not going to read off all of them--past medical history, past investigations, personal habits--

Ms. Copps: Past medical history would be out, would it not?

Mr. Renwick: I do not know whether it is legitimate to ask whether or not I have had German measles, red measles, scarlet fever, allergies or I do not know what.

Hon. Mr. Elgie: There would principally be some information that would be important for a company to know in terms of exposure that might be legitimate.

Mr. Renwick: I do not want to get into that question about whether you adapt the person to the work place or the work place to the person.--

Hon. Mr. Elgie: That is not an adaptation of the work place--

Mr. Renwick: There is contraceptive screening history; ENT; personal injury and emotional history; chest; VS, whatever that means; GI, whatever that means; musculoskeletal; skin; GU, and neurological, but I am not satisfied that this compendious form of words rules out that kind of offensive employment application form.

Ms. Copps: From my reading of what we are trying to do in the Human Rights Code, it certainly does not rule out all of those historical applications. But I do not believe that the Human Rights Code is the manner that we would deal with that immediate policy. I do not know whether there is a mention of application forms in the Employment Standards Act. We do not even get into the area of

musculoskeletal, et cetera, in the code. All this, from my reading of it, says that one cannot say to this person--

Hon. Mr. Elgie: But you see, indirectly, if you inquire into the musculoskeletal system, you are trying to find out previous back problems, for example. I think that sort of thing would be covered here.

I am certain that there are things that will not be covered because they are not within the context of this bill, but I think that the major things that Mr. Martel and I have talked about and the major items in that questionnaire would be covered by this. Anyway, that is my view. I have held it for some time, as you know.

Ms. Copps: Is a drinking problem considered a handicap? Do you remember when they had that questionnaire last year where they inquired into people's drinking habits and it caused quite a big brouhaha in the House?

Mr. Renwick: Was there any actual action taken by the commission against Canadian Blower, and if so, what was it?

Mr. Chairman: Mr. Brown, can you comment on that?

Mr. Brown: We did contact the company. We had a series of discussions with them with respect to the offensive nature of some of the questions. The company was buying that service from a medical outfit. I cannot recall if it was located in Kitchener or in the United States. The undertaking they gave was they were going to renegotiate the contract with that medical company with a view to not using them any more. I believe that is where the matter is at the moment. They were quite concerned about--

Mr. Renwick: Perhaps I could ask Mr. Brown, Mr. Chairman, did you feel you had any authority under the code to conduct that discussion with them, or were you doing it as a matter of your good offices because it was of concern?

Mr. Brown: Well, we had no authority under the current code, we had none because of the absence of the "handicapped" section. But by virtue of the fact that most of the questions were skewed in the direction of females, we thought we had a sound base for discussion.

Mr. Renwick: On the basis of sex?

Mr. Brown: Yes.

Mr. Renwick: I have extreme reservations about whether or not this section of the bill is adequate to catch it under the term that directly or indirectly classifies or indicates qualifications by a prohibited grounds of discrimination and hanging it on the definition of "handicap."

11:40 a.m.

I will report my concerns to my colleague and he undoubtedly will be in touch with you about it. I wish I knew how to solve it.

I do not know how to solve it. I think a goodly part of that application form is still permissible and will not be prohibited under the code.

Hon. Mr. Elgie: That may be so, and it may be a matter that will have to be dealt with under another act, such as the Employment Standards Act. But I am telling you that Elie and I have talked about it, and in my view those questions, or the majority of them, would be deemed to be obtaining information indirectly which now could not be obtained directly under this bill. The commission would now have authority on that ground, as well as--if it were the case of a female--on the grounds of sex, for example.

Mr. Renwick: When you responded to my colleague on this matter you said, "I want to assure the member that amendments I will be proposing to the Human Rights Code will restrict, and I hope make the sort of questions in this form that troubled both the member and myself, and all of us, not possible." And then you went on further, in response to a supplementary question: "There are a variety of questions that go beyond the offensive ones the honourable member has recited. I want to assure him that the amendments proposed will deal with that problem."

Am I able now to inform him that to a degree you believe this will deal with it but you may now have to consider amendments under the Employment Standards Act to deal effectively with that kind of form?

Hon. Mr. Elgie: I think if situations are brought to my attention that are deemed to be appropriate ones, then I would have to look at amendments under another bill. But as far as this bill is concerned, I am satisfied that that section deals with not all, but at least the majority of the problems that were raised with that particular medical form.

I think your report to the honourable member would be an accurate one.

Mr. Renwick: I have tried to make myself informed, in a limited way, about the so-called genetic engineering problem, that is, fitting people to the work place by ruling certain people out of certain employment, because of their particular characteristics, rather than requiring employers to make their work places safe and adequate. I do not pretend to know all the ins and outs of it.

I have read those articles which appeared in the New York Times earlier this year, I guess it was, and I have read some information about that whole question. I take it that this bill is not the appropriate place to deal with that kind of problem.

Hon. Mr. Elgie: Genetic engineering? No, I would not think so. It would come under medical experimentation.

Mr. Renwick: I am talking about application forms which are designed to rule people out of employment because of some genetic defects.

Hon. Mr. Elgie: That is too broad a term.



Mr. Renwick: Do you know the problem I am talking about?

Hon. Mr. Elgie: I am not quite sure I do, to tell you the truth.

Mr. Renwick: All right, I will dig out my papers. I am sure I will be able to find some section of the bill to bring it up again.

Hon. Mr. Elgie: Feel free to bring it up at lunch some time.

Mr. Chairman: Shall section 22(2) carry? Carried.

Shall section 22(3) carry? Carried.

On section 22(4):

Mr. Renwick: Section 22(4) was the subject of a statement by the minister some time ago, if I remember correctly, on a study by the Canadian Civil Liberties Association. "Job Placement Cards Stacked. Elgie Pledges End to Colour Bar." This is December 13, 1980. Do you believe that this section deals with the concerns of the civil liberties association which, when drawn to your attention, caused you concern?

Hon. Mr. Elgie: Jim, I do not want to mislead anybody. This is a very difficult area that we cover not only in this code but under the Employment Agencies Act, which, you may not recall, also allows the employment standards branch to deal with this issue. We have been making efforts to deal with it through a couple of approaches.

The civil liberties association, whenever it decides to carry out an investigation, obtains its information by a technique known as entrapment, that is telephoning the employment agency and putting the question in such a way to endeavour to find out how that agency will behave as a result of that question. The association acknowledges, as I am sure you do, that entrapment is a very questionable technique to be used by a human rights agency, and indeed by employment standards officers under the Employment Agencies Act. Entrapment is a technique of investigation that is subject to severe criticism by the association itself.

The other option that was presented to us, and the one that I was exploring at the time I made that statement, was that of requiring employment agencies to list all the prohibited grounds, as they took the information over the phone or personally, to write down age, sex, marital status and family status, so that, at some time, an officer could walk into the office and review their records and determine whether there had been a group of people excluded as a result of the information on record.

Initially, I have to tell you, I found that rather an appealing way to deal with it. But the more I thought about it, the more I thought we were putting in the hands of agencies information that made it very easy for them to discriminate, and there may or

may not be records available for us to peruse at the appropriate time. Rightly or wrongly, I think we all agreed in our ministry, and I think Mr. Brown from the human rights commission would agree, it was a technique we did not find acceptable.

Having said that, it is still difficult to find a technique one can use to deal with these very real problems. We set up some time ago, it has not reported yet, an internal task force made up of representatives from employment standards, human rights and Mr. Ignatieff, the assistant deputy minister who is in charge of programs, to see if, internally, we can come up with some approach that (a) is not entrapment, and (b) does not put information in the hands of employment agencies, which is really the kind of information we say they cannot ask.

It is a real problem, I kid you not. I am telling you straight out how it is. We are still endeavouring now, through an internal task force, with the combined opinions of human rights, employment standards, and other members of the ministry, to find out if there is an acceptable approach, but I acknowledge there are difficulties whichever way you go. There may be some other way, and that is what we are looking at. I am not trying to stall or anything. I am telling you honestly--

Mr. Renwick: I understand that, and I understand the reasons why you have apparently been rethinking your initial response, which was printed in the press, on the question of amending the Employment Agencies Act. It is right here. I happen by coincidence to be having luncheon with Alan Borovoy next week, and I wanted to let him know, because he thought your responses at the time were pretty good and very much appreciated. I am not underestimating the problem, but you do have an internal task force that is dealing with it. Would it be too much to ask somebody just to drop me a note telling me about that and the names of the people who are on it.

Hon. Mr. Elgie: I would be pleased to do that. Anyone else want a copy of that letter?

Mr. Chairman: Anything else on subsection 4?

Mr. Renwick: This is the best you feel you can come up with at the present time on this whole question of employment agencies?

Hon. Mr. Elgie: Well, that deals with the problems, but it does not deal with the mechanisms to get at the problems, and that is the area where there are real difficulties, whichever way you turn. We are trying to find a mechanism to deal with it that is not offensive.

11:50 a.m.

Section 22 agreed to.

Mr. Chairman: Are we at 23?

Interjections.

Hon. Mr. Elgie: I do not want to be debagging anybody, but it would really have been a lot easier if we had been following the reprint of the bill, which is why I proposed it. Now we are having these problems.

On section 23:

Hon. Mr. Elgie: The next section in the new bill is number 23 and it starts out: "The right under section 4 to equal treatment with respect to employment is not infringed where," and then it has (a), (b), (c) and (d) as subsections.

Interjections.

Ms. Copps: In 23(a) we were changing one word to 'primarily.' We already discussed the whole thing last night.

Mr. Renwick: The problem that occurred to me regarding 23--

Hon. Mr. Elgie: Mr. Hess, can you find the appropriate amendment--

Mr. Hess: If we are going by Bill 7, we are using this new amendment that was just handed out this morning.

Interjections.

Mr. Stevenson: Do you want all that read into the record?

Interjections.

Mr. Dean: What I have here is the old section 21(2), (3), (4) and (5) to be changed to the new section 24(2), (3), (4) and (5). That is not where we are at, is it?

Interjections.

Mr. Stevenson: Section 21(6) becomes 23.

Mr. Chairman: That is right. Section 21(6) becomes 23, but we should deal with 21(1), (2), (3), (4) and (5) first. We are working off the old document. Does everybody follow that then?

Mr. Dean moves that section 21(2), (3), (4), and (5) of Bill 7 be renumbered as section 24(2), (3), (4), and (5), and as renumbered be struck out and the following substituted therefor:

"24(1) The right under section 4 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination.

"(2) The right under section 4 to equal treatment with



respect to employment without discrimination because of age, sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the Employment Standards Act and the regulations thereunder.

"(3) The right under section 4 to equal treatment with respect to employment without discrimination because of handicap is not infringed, (a) where a reasonable and bona fide distinction, exclusion or preference is made in an employee disability plan or benefit because of a pre-existing handicap that substantially increases the risk, (b) where a reasonable and bona fide distinction, exclusion or preference is made on the ground of handicap in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to his employees if they are fewer than twenty-five in number.

"(4) An employer shall pay to an employee who is excluded because of a handicap from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a handicap."

Mr. Chairman: Okay. You realize this is going to be 24. The old section 21(6) is moved to be 23. Is there any reason why we have to look at that before this?

Hon. Mr. Elgie: No. We can deal with this now.

Mr. Chairman: Everybody understands what we are doing then? Any discussion?

Ms. Copps: I have a couple of questions. First, why does subsection 3(a) deal specifically with the disability plan, and why not any insurance plan? Second, why is "substantially increases the risk" included in part 3(a) and not in part 3(b)? Third, are employers of companies over 25 in number by osmosis allowed to discriminate? You specifically refer in 3(b) to employers in organizations that are fewer than 25 in number. No reference is made to 25 and over in a positive or a negative fashion. So the conclusion may be that you have chosen not to set it in the legislation, and they may be allowed to discriminate on 3(b) if they have 25 or more employees.

Hon. Mr. Elgie: Mr. Hess can correct me if I am wrong. I believe under section 24(1) that employers with over 25 would be required--it would be discrimination not to include them unless--is that right, Mr. Hess?

Mr. Hess: Yes. That is a general section, and 3(b) and "fewer than 25" is by way of exception to the general principle.

Hon. Mr. Elgie: Mr. Hess, I know you were telling me last night, but I cannot recall exactly, why we have worded 3(a) the way

we have, to include the words "substantially increases the risk."

Mr. Hess: This is restricted to a disability, and I suppose a simple answer to that is it fits in with what the federal government did under the Canadian human rights code. I guess that is one answer. And it is applicable in other jurisdictions as well. We were mindful of the fact that insurance is a national industry and not merely conducted on a province-to-province basis. So we wanted not to have rules that divided insurance provincially in that respect.

In any event, it is a recognition of the fact that a pre-existing handicap may substantially increase the risk and thus require a reasonable and bona fide distinction, exclusion or preference in an employee disability plan. It was put to us--and I say this so you are aware of it--that without that, it may be the costs of group insurance in the disability area would rise to such a point that employers would discontinue trying to negotiate disability plans for their employees.

Hon. Mr. Elgie: And the words, "substantially increases the risk"?

Mr. Hess: It is limited directly to that now, because in this case we are dealing with a pre-existing handicap, obviously a physical or medical condition, and we think that in itself might be capable of being judged as being something that substantially increases the risk.

Hon. Mr. Elgie: In a group plan, where the risk is being spread?

Mr. Hess: Yes.

Ms. Copps: I am still a little confused as to why in 3(a) you refer specifically to "disability plan" and in 3(b) to any "employee benefit, pension or superannuation plan."

Mr. Hess: We wanted to restrict 3(a) to permit a discrimination, but only in a disability plan, because of pre-existing handicaps. That is one reason. When we get down to 3(b), we are dealing with an entirely different type of situation. We are dealing with what we call "employee-pay-all or participant-pay-all," in other words, where a person who is a member of a group of employees has different options that he can select apart from the basic coverage. He can ask for increased life insurance, which he would pay for himself--let's assume that is what is provided--or other extended coverage. In those situations, it is the general rule in all employer coverage of that nature that there may be reasonable distinctions to make a person pay for what he wants out of his own pocket, if he wants these additional options.

12 noon

Ms. Copps: How does 24(3)(a) jibe with 24(1)? To me they are totally contradictory.

Mr. Hess: Of course, they are.

Ms. Copps: If they do contradict each other, why aren't you making the contradiction a condition, because both sections--

Mr. Hess: You have to read the whole section--just listen to me for a moment, please. Subsection 1 is the general prohibition and 3(a) is an exception to that general prohibition. One is a prohibition and one is an exception to the prohibition.

Hon. Mr. Elgie: Subsection 1 is general, 3 has some exceptions and 4 says that even if you come under the exception you still can't refuse to hire somebody on that basis alone and you have to give the individual the equivalent amount of money that would otherwise have been paid.

Ms. Copps: I understand that. I just find the conditions are not set out in a particularly legal fashion. I would have thought you would have used a "notwithstanding" formula in 3(a). However, I did want to make a couple of amendments.

Hon. Mr. Elgie: Are you saying "Notwithstanding subsection 1," the right under section 4 to equal treatment?

Ms. Copps: I am not going to propose it, but I think the legal wording is somewhat ambiguous, that's all.

Mr. Chairman: Have you got amendements you wish to make?

Hon. Mr. Elgie: Mr. Stone, do you have any comments on this? You were the drafter.

Mr. Stone: No, I don't.

Hon. Mr. Elgie: Do you think it is legally accurate?

Mr. Stone: I am afraid I don't understand Ms. Copps's point. It seems clear to me, but I may miss the point.

Ms. Copps: Okay. The amendments I want to make relate to 3(a) but I don't have even copies of them and they are only minor things.

Hon. Mr. Elgie: Do we have unanimous agreement to ban the 24-hour rule?

Mr. Chairman: Is there any other difficulty with 24(1) and (2)? Ms. Copps, do any of your amendments deal with 1 and 2?

Ms. Copps: I would include "handicap" as well as "age, sex, marital status or family status" under section 24(2).

Mr. Hess: The Employment Standards Act does not deal with handicap.

Hon. Mr. Elgie: That is why section 3 is in.

Mr. Renwick: I don't have any amendments, but I have some



questions. I want to make sure I understand the clause. I think I do, but I am not certain about it. I understand subsection 1. My first question relates to subsection 2. Just for my information, what requires you to make the exception in subsection 2 about the Employment Standards Act? Was there some specific worry about the contract under the Employment Standards Act so that it had to be excepted from the general provision of subsection 1?

Mr. Hess: We have quite an elaborate scheme under the Employment Standards Act. The act prohibits discrimination because of age, sex, marital status or family status. But then there is a regulation which is rather lengthy. It is rather complicated. It provides for exceptions to that, treating everyone equal irrespective of age, sex, marital status or family status. The exceptions are--

Mr. Renwick: Which regulation is it?

Mr. Hess: Ontario regulation 654/75. I do not have the 1980 number. It deals with benefit plans under part X of the Employment Standards Act.

I guess I could best summarize it by saying that the exceptions there that are permitted because of age, sex, marital status and family status, generally speaking fall into two areas. One is where there is a difference because of an actuarial basis. That is the one main thrust of it. The other main thrust is the employee-pay-all portion where the options are selected in which the employee wants to have three times more insurance, say, than what the group plan as a standard calls for. Those are the two main features of it.

Mr. Renwick: Thank you. I just wanted that information. I did not know why you had to make the exceptions, that is all. Coming then to subsection 3.

Mr. Chairman: I would like to finish 1 and 2 if we can.

Section 24(1)? Carried.

Section 24(2)? Carried.

Ms. Copps, you have an amendment to subsection 3?

Ms. Copps: It would be an amendment to section 24(3) (b) which would include, prior to the word "handicap," the word "pre-existing" and just after the word "handicap," the words "but substantially increase the risk in respect of an employee-pay-all or participant-pay-all benefit," et cetera.

So I am introducing under section 24(3) (b) also the notion of a pre-existing handicap that substantially increases the risk. The reason I think "pre-existing" is the important word is because obviously, with the number of work accidents we do have, there may be situations where someone, let us say, is injured in a work accident on the job.

If "pre-existing" is not included, he could actually be

disfranchised from an insurance program within the company after he or she has actually become involved with the company. Of course, the notion of substantial increase in the risk was already discussed in the previous amendment.

Hon. Mr. Elgie: Any comment on that, Mr. Hess?

Mr. Hess: I do not understand it. Let us get to what we are talking about. We have a situation where an employee-pay-all benefit is offered to an employee in addition to the standard coverage under the group plan, fund or contract. Let us assume there is nothing that prevents it. He becomes a member of that plan. Now you say you want to be able to allow discrimination to take place in that situation because of pre-existing handicap. That is what we have said here, I would suggest to you, Ms. Copps.

Ms. Copps: The word "pre-existing" is absent from this particular clause. All I am saying is without the word "pre-existing" you may get a situation where a person is actually enrolled in a plan and upon a renewal period they may have in the meantime suffered a work accident on the job and be disfranchised.

The reason I raised the point is because we know that many workers who are on Workmen's Compensation Board and that kind of thing fall into the category of a handicap that was not pre-existing, in other words, prior to their employment with the company. I think by leaving out the notion of pre-existing, where you have it in other areas, you could be allowing an employee-pay-all plan to disfranchise an employee who is actually injured on the job in the course of his employment with that organization.

12:10 p.m.

Hon. Mr. Elgie: I do not follow.

Mr. Hess: You are talking about employee-pay-all here. That is an option that he is offered. He may have to qualify for medical reasons. Let us suppose the plan offers a standard life insurance coverage of \$10,000. When he joins that plan there are options which enable him to increase that tenfold to \$100,000 life insurance coverage. He has to pay for that extra out of his own pocket. Let us assume he is covered and then are you saying they are trying to put him out of the plan?

Ms. Copps: When he develops a handicap in the course of his employment.

Mr. Hess: Which results in his loss of employment; then he goes out of the plan?

Ms. Copps: Potentially; I do not know whether there would be a renewal clause every five years or something like that.

Mr. Hess: There is a conversion privilege in every group insurance plan, as I understand it. I am not very familiar with all the intricacies of this.

Ms. Copps: I understand the conversion principle applies when a person needs the plan and leaves the company, but I am saying--when you have used the word "pre-existing" in other areas, obviously you are saying that in a situation where an employee comes to a new company with a pre-existing handicap there may be circumstances where you would discriminate.

Mr. Hess: This is only these extra options, these additional coverages that the employee has to pay for himself entirely. It does not affect the standard coverage in the plan at all. He still has those.

Ms. Copps: I understand that, but all I am saying is that if there were--let us say, this would permit a clause to be built into the plan whereby an employee-pay-all person could be dropped from the plan if he happens to have an on-the-job accident, for example, or develop a risk in the course of his employment, when he continues to be employed by the same person. If that were built into the contract it would be legal, unless you specify pre-existing handicaps.

Mr. Hess: Not under this section, I would suggest to you.

Hon. Mr. Elgie: Mr. Hess, is it worth setting aside and redoing?

Mr. Hess: I do not think so because I am confused about this suggestion.

Ms. Copps: You have used "pre-existing" in other areas. You have not used it here. Why have you dropped the word "pre-existing" here?

Mr. Hess: Because we are dealing with handicapped generally here.

Hon. Mr. Elgie: But it is in section 24(3) (a) Mr. Hess.

Mr. Hess: Well, subsection 3(a) covers the actual instance of becoming entered into the plan, becoming a participant in the plan. We are now dealing with a person who is a participant; he is in the plan.

Ms. Copps: No, you are dealing with an employee-pay-all plan. That is the difference. You are dealing with an employee-pay-all plan in clause (b) and in clause (a) you are dealing with an employer plan. That is the only difference.

Mr. Hess: No.

Mr. Stevenson: I am not sure you understand each other. I think Ms. Copps is saying: "This guy is on the job. He is paying. He is hurt. He may be off for a while. He comes back with the same company with a handicap. Now, can he continue in the plan that he had before? Is there any risk that, after being hurt and obtaining a handicap, that he would be dropped from that plan even though he was still employed by the same company?"



Mr. Armstrong: Or have his premium increased.

Mr. Stevenson: Or have his premium increased. The fact that he is again back with the same company, after being hurt, is his position altered?

Mr. Hess: I wish I knew a little more about this plan. I do not think so, but I cannot say that for certain.

Hon. Mr. Elgie: I frankly do not know. May we set this aside? Is that all right with you, Ms. Copps?

Ms. Copps: Yes.

Mr. Chairman: Do you want to set all three aside? I think we agreed on clause (a), did we not?

Mr. Renwick: I just have a question about clause (a) or a comment. Actually it is not an exception to subsection 1, am I correct on that? In other words, this is the only place an employee disability plan or benefit is mentioned. Or is it, in fact, a specific exception to subsection 1?

Hon. Mr. Elgie: If it is reasonable and bona fide.

Mr. Renwick: This is an employee disability plan.

Hon. Mr. Elgie: What is your answer to that?

Mr. Renwick: No, all right, I withdraw. I see it now. I understand, no problem.

Ms. Copps: Can we pass section 24(3) (a) then, and set (b) aside?

Mr. Chairman: We will try it. Can section 24(3) (a) carry? Carried.

Section 24(3) (b) will be stood down.

Shall section 24(4) carry? Carried.

Mr. Stevenson: Mr. Chairman, I move that section 21(6) of the bill be numbered as section 23(a). I move that the words "social organization that is exclusively engaged in serving" in the second line of clause (a) of the renumbered section be struck out and the following substituted therefor: "social institution or organization that is primarily engaged in serving."

I move that clause (c) be struck out, and the following substituted therefor: "(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 4, where the primary duty of the employment is attending to the medical and personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person; or..."

I move that the section as renumbered be amended by adding the following thereto: "(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee."

Ms. Copps: On the new section 23(c), again I'd like to move a very small amendment, the deletion of "or personal needs." If we look back to the presentation that was made by the International Coalition to End Domestic Exploitation, I think the minister is aware of that presentation, there was an interpretation here that "personal needs" could deal with issues like housekeepers. We know already that legally advertising agencies do advertise for Filipino or British nannies as opposed to other nannies who may come into Canada.

The notion that you are allowed to discriminate in the medical needs of a person, I think, is certainly one that can be supported in legislation. However, I do not think the notion that you can discriminate against the hiring of a cleaning lady or a housekeeper, who would service personal needs, is a sound one. If we deleted "or personal needs," it would specifically refer to the medical needs of the person or ill child or infirm, aged, et cetera. The fact that they have included "ill child and aged person" in the amendment would lend verity to the fact that the focus of the amendment is on the medical needs of the person rather than on the personal needs. I think this notion of personal needs is subject to too broad an interpretation.

Hon. Mr. Elgie: I met with Intercede about this, and they agreed that this is an improvement over the previous wording, but they have still have some of the concerns Ms. Copps has mentioned. But really, we are talking about two things. We are talking about someone who is a companion for an ill, aged or infirm person, and we are talking about someone who, for personal reasons, is a companion of such an ill, aged or infirm person.

These are the kind of duties that people feel very strongly about. The relatives of an individual may wish have some say in a variety of areas as to who shall be hired to meet those needs. I am thinking of old and infirm people. Those persons may desire to have someone of their own age, someone of the same sex, or someone who is old. A variety of things come into that very personal relationship of a companion, which we don't feel should be covered under this act even though we have now given coverage to other employment-related aspects having to do with housekeepers.

2:20 p.m.

Ms. Copps: Mr. Chairman, I have no objection to that at all; in fact, I can understand it completely. But how would you respond to the notion that "personal needs" could be interpreted as meaning a housekeeper, a cleaning lady or a cleaning man? The way the revisions are drafted you could theoretically discriminate even on the basis of cleaning ladies, a nanny and those functions, and those are the functions that interest me and that I am primarily concerned with rather than the notion of having a man in for a medical infirmity, because I think this bill allows that leverage.

Hon. Mr. Elgie: I think we all agree that a companion needs to have recognition as an area of special exemption in this code. The definition of "companion" is difficult to reach, and we concluded that "medical or personal needs" met that definition. Clearly, it will be up to the human rights commission to determine whether or not that is legitimate, and there may well be some problems related to it, Ms. Copps. But that's what the job of the commission is, and I really don't see any other way around it if we're going to preserve the legitimate right of people to make the decision of who's going to be a companion and under what terms.

Ms. Copps: What if you substitute for the word "personal" the word "companion"--"medical or companion needs"?

Hon. Mr. Elgie: The needs of the companion? We are talking about the needs of the person, not the needs of the companion.

Ms. Copps: No, no; "companion needs." "Companion" is an adjective: "medical or companion needs of the person or an ill child," et cetera. That would specify the notion of companion very clearly.

Interjection: It's a noun, not an adjective.

Hon. Mr. Elgie: That's my point: It's a noun, not an adjective, isn't it?

Ms. Copps: Okay, "companionship needs" if that's better, but it specifies the notion of companionship rather than personal needs, which could refer to any number of a gamut of people concerned in the medical--

Hon. Mr. Elgie: Do legislative counsel have any comments?

Mr. Stone: No.

Mr. Hess: I would have thought that "personal needs" implies more than merely housekeeping.

Hon. Mr. Elgie: It implies personal attention.

Mr. Hess: Yes. Personal needs are--

Mr. Renwick: Mr. Chairman, could I try another tack on this by asking a question? Why did you not qualify the word "person" with the words "aged, infirm or ill" as you have in the rest of the clause? In other words, why do the last three lines not read, "attending to the medical or personal needs of an aged, infirm or ill person or of an ill child or an aged, infirm or ill spouse or other relative of the person?" Why did you feel that there was a need to qualify the child, the spouse and the other relative but not to qualify the primary person? In other words, I would be satisfied that we had met the need if you would agree to delete the word "the" in front of "person" and made it "an aged, infirm or ill person." Then it would read on: "or of an ill child or an aged, infirm or ill spouse or other relative of the person."



Hon. Mr. Elgie: For that person we are dealing with companionship at large, but in terms of decisions about others we have defined it in terms of the ill, aged or infirm.

Mr. Renwick: You are not prepared to limit the term "person"?

Hon. Mr. Elgie: No, I don't think so.

Mr. Hess: It extends it so far, Mr. Renwick, and goodness knows where it ends with your suggestion.

Mr. Renwick: I don't think it would be extensive, because what you would have to do is determine if the person was aged and infirm--

Mr. Hess: It means that one person who is aged and infirm could set himself up as hiring these kinds of people for anybody else there, and he could discriminate. That is what we don't want. We don't want to go that far, and I don't think you do, either.

Mr. Renwick: I don't agree that I am going that far. I was--

Hon. Mr. Elgie: I just wondered why "companionship" if the companion wanted--

Ms. Copps: Can we just vote on the deletion of "personal"? I am suggesting "to medical or companionship needs of an ill child."

Mr. Chairman: Are we ready to vote on that amendment? This is--I'm sorry. Which is that?

Ms. Copps: This is an unwritten amendment.

Mr. Chairman: Section 23(a), then.

Ms. Copps: It's 23(c) we're on.

Mr. Chairman: No, we haven't passed (a) and (b) yet.

Ms. Copps: We haven't?

Mr. Chairman: Not that I know of.

Shall section 23(a) carry? Carried.

Shall section 23(b) carry? Carried.

On section 23(c), Ms. Copps has an amendment. Just read it once more, Ms. Copps.

Ms. Copps: "Attending to the medical or companionship needs of the person or of an ill child," et cetera.

Mr. Chairman: All in favour of the amendment? All opposed? The amendment is defeated.

Ms. Copps: Just a minute. It's not defeated; it's a tie.

Mr. Chairman: Oh, I'm sorry. I didn't see. It's a tie vote.

Hon. Mr. Elgie: Oh, the burden that falls on your shoulders, Mr. Chairman. Can you handle it?

Mr. T. P. Reid: Does anybody want to make a bet on how the chairman votes?

Hon. Mr. Elgie: I know how you used to vote as chairman.

Mr. Chairman: You mean I have to keep up with what we are doing here?

Interjections.

Ms. Copps: How does the chairman vote? Did the chairman cast his ballot?

Mr. Chairman: The chairman votes against the amendment.

Ms. Copps: Oh, I'm surprised.

Mr. Chairman: Does section 23(c) carry, then, without the amendment? Carried.

Shall section 23(d) carry? Carried.

Section 23, as amended, agreed to.

The committee adjourned at 12:28 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, NOVEMBER 19, 1981



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)  
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)  
Copps, S. M. (Hamilton Centre L)  
Eakins, J. F. (Victoria-Haliburton L)  
Eaton, R. G. (Middlesex PC)  
Havrot, E. M. (Timiskaming PC)  
Johnson, J. M. (Wellington-Dufferin-Peel PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)

Substitution:

McClellan, R. A. (Bellwoods NDP) for Mr. Stokes

Also taking part:

McLean, A. K. (Simcoe East PC)

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister

Brown, G. A., Executive Director, Ontario Human Rights Commission

Elgie, Hon. R. G., Minister

Hess, P., Director, Legal Services

Stratton, J., Director, Conciliation and Compliance, Ontario Human Rights Commission

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, November 19, 1981

The committee met at 8:17 p.m. in room No. 228.

HUMAN RIGHTS CODE  
(concluded)

Resuming the adjourned consideration of Bill 7, An Act to revise and extend protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order.

Hon. Mr. Elgie: Mr. Chairman, Ms. Copps had raised some questions about section 24(3)(b), and if she is agreeable, I would like to leave that to stand until the next session. Mr. McClellan said Jim Renwick had raised a question about section 12. I will leave it up to you to make the decision about whether we can resolve that tonight. That is the right to free speech section which you will recall originally raised some controversy.

Mr. Renwick suggested or asked about the reasonableness of adding to section 12 the phrase "any statement, notice, symbol, sign or emblem." We have reviewed that at great length and I have to tell you that the section as it is now is as it has been in other codes in this province and other codes in other provinces. I am sure you all know that it aimed at displays before the public--in the window for example, or in other settings--of symbols, notices, signs, emblems, or other similar representation, as in a window of a store and so forth.

When you get into the area of statements, you get into a lot of feelings that I know many of us have about how repugnant certain opinions and views and statements may be, but that really hits into the area that we clearly had to look at about free speech. In addition, it may well get into some jurisdictional problems. If you look at the Criminal Code, section 281(22), it clearly says, and if I may read it, "Everyone who, by communicating statements, other than in private conversation..." et cetera.

I know that the present Attorney General in British Columbia, Allan Williams, has introduced a bill dealing with statements and literature, but it is our view that if the area of statements, be they oral or written, is to be dealt with, it should be dealt with either in the Criminal Code or through special legislation from the Attorney General, if he deems, and if the courts deem, that the British Columbia bill is intra vires. So it would be my preference for those reasons not to change section 12 as it is written now.

Mr. Chairman: Any difficulty dealing with 12 now?

Mr. McClellan: No, I think it is probably wise to proceed, Mr. Chairman.

Section 12, as amended, agreed to.

8:20 p.m.

Mr. J. M. Johnson: Mr. Chairman, just on a point of clarification or order, I would like to ask the minister and the opposition if there is any time frame we could work towards.

I had a meeting with the House leaders today and there is a problem pertaining to the timing. We have estimates that are running behind, and if there is any possibility, perhaps we could work towards a date to determine when this bill will be through so that we could report back to the House. I am sure that all members of this committee would like to see it sent back to the House. All I am really requesting is that we speed up some of the sections. Maybe Mr. McClellan and Ms. Copps would give some consideration to the problem we do face with the timing.

Ms. Copps: (inaudible) get this whole process over with as quickly as possible.

Hon. Mr. Elgie: Are you suggesting that we should work towards some time Tuesday or Wednesday of next week?

Mr. J. M. Johnson: I had suggested, in fact I talked to Mr. Johnston and some of the people on the committee, and there was some thought that possibly we could be finished by next Wednesday. Is that feasible?

Hon. Mr. Elgie: Can we work towards Wednesday then?

Mr. McClellan: As far as I am concerned, yes. I do not speak for my colleague Mr. Renwick who is ill this evening. He is not here.

Ms. Copps: He was celebrating the victory.

Hon. Mr. Elgie: And he is still celebrating Manitoba.

Mr. McClellan: The realities of November 17. We will go as quickly as is reasonably possible, Mr. Johnson.

Hon. Mr. Elgie: There certainly seems to be a consensus to complete it as soon as possible, and we will shoot for next Wednesday.

Hon. Mr. Elgie: The next is section 22 of the old bill. Does somebody have an amendment on 22 of the old bill?

Mr. Chairman: Mr. McNeil moves that section 22 of the bill be stuck out.

Hon. Mr. Elgie: I think the reason for that is obvious. We included the whole question of application forms, advertising, interviews into the new section 22.

Motion agreed to.



On section 23:

Mr. Chairman: Mr. McNeil moves that section 23 of the old bill be renumbered as section 25.

Motion agreed to.

On section 25 as renumbered:

Mr. Chairman: Is there any question on any part of that? Anything on the old 23?

Ms. Copps: We did not go through 24 of the new bill.

Mr. Chairman: Yes, we did. We did it all but 24(3)(b) which was set down. I think all we have to do is carry the new 25.

Section 23, as amended, agreed to.

Section 25, as renumbered, agreed to.

On section 24:

Mr. Chairman: Mr. McNeil moves that section 24 of the bill be amended by adding thereto the following subsection as subsection 2, "The commission is responsible to the administration of this act," that the subsections be renumbered accordingly, and that the section be renumbered as section 26.

Mr. McNeil: Responsible to the minister? I did not like that part of it.

Hon. Mr. Elgie: I am not sure I do all the time.

Mr. Chairman: "The commission is responsible to the minister for the administration of the act" has been added as the new subsection 2. Is there any question on the new section 26, on any of the six parts?

Ms. Copps: You do not specify in that that the Minister of Labour is specified under the definition of the minister.

Hon. Mr. Elgie: No. There have been many presentations, privately and to the Premier and to many of the members, that the responsibility of the human rights commission may from time to time need to be reconsidered, whether it should be with the Attorney General or some other minister, so this leaves it open for the government and the executive council to alter that if it is deemed appropriate.

Ms. Copps: As I recall the objection, rather than having a minister they had preferred the Legislative Assembly.

Hon. Mr. Elgie: Yes. We do not agree with that.

Mr. Chairman: Is it just wishful thinking, Mr. Minister, to leave it open like that?

Hon. Mr. Elgie: No, I have no problems with it.

Section 24, as amended, agreed to.

Section 26, as renumbered, agreed to.

On section 25:

Mr. Chairman: Mr. McNeil moves that section 25(2) of the bill be amended by substituting "28" for "26" in the third line thereof, and that the section be renumbered 27.

Section 25, as amended, agreed to.

Section 27, as renumbered, agreed to.

On section 26:

Mr. Chairman: Mr. Lane moves that clause (a) of section 26 be struck out and the following substituted therefor: "(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law."

Hon. Mr. Elgie: Members of the committee, that simply is to bring that in line with the new preamble wording. The old wording was in line with the old preamble and we simply altered it in line with the new preamble.

Ms. Copps: In that regard, to be in line with our argument against the new preamble, we would have to move that "that is contrary to law" be deleted. I think the arguments for that position have already been well articulated and I will not go into them again, but we would move that "that is contrary to law" be deleted in the spirit of no discrimination in any instance.

Mr. Chairman: Ms. Copps, you are moving then that the new section 28(a) be deleted?

Ms. Copps: No. I am moving that "that is contrary to law" be deleted at the end of the clause.

Mr. Chairman: Ms. Copps moves that section 26(a) of the bill be amended by deleting "that is contrary to law" at the end thereof.

The same arguments will be referred back to. Is there any discussion on that? All in favour? Opposed?

Motion negatived.

Section 26(a) agreed to.

Section 26(b) agreed to.

Mr. Chairman: Mr. Lane moves that clause (c) of section 26 be struck out and the following substituted therefor: "to recommend for consideration a special plan or program designed to

meet the requirements of subsection 13(1), subject to the right of a person aggrieved by the implementation of the plan or program to request the commission to reconsider its recommendation and section 36 applies with necessary modifications."

8:30 p.m.

Hon. Mr. Elgie: It really is just in line with government policy. Although the commission may recommend for consideration, there was a strong feeling that to recommend the introduction and implementation had overtones of moral suasion beyond what the government feels is appropriate; accordingly, the amendment indicates it is for consideration.

Mr. McClellan: Recommend to whom?

Hon. Mr. Elgie: To whomever the commission, be it an individual, a business or a group or association of businesses, in the opinion of the commission believes there is some practice taking place that the commission feels would be benefited by a special program. The commission on its own instigates some investigation simply within that business. If there are special programs indicated, it may recommend that program for consideration of the business or association.

Mr. McClellan: Surely that is what a recommendation is. I do not know what the nervousness is about the language. It just seems to be a watering down of a once removed kind of thing. A recommendation is not an order or an instruction that has to be obeyed; it is a recommendation.

Hon. Mr. Elgie: Then you will not disagree with the amendment.

Mr. McClellan: It speaks to a nervous Nellyism that I wish we did not have to deal with.

Hon. Mr. Elgie: We will put your hero button on you later.

Mr. McClellan: I will have a red one, if you please.

Ms. Copps: I do not know whether this makes any difference in the legal transition, but section 36 has not been passed yet. I do not know whether you can pass this before section 36 is passed.

Hon. Mr. Elgie: That is so all through the act. If you read section 13, which is the special program section, it refers to a variety of sections later on. If the later sections are not passed, we will have to go back.

Ms. Copps: Okay.

Hon. Mr. Elgie: That is one of the difficulties with it. I think we recognize we will have to go back if things are changed in other sections.

Section 26(c), as amended, agreed to.



Mr. Chairman: Mr. Lane moves that clause (d) of section 26 of the bill be amended by adding the word "undertake" after the second "and" in the second line, and moves that section 26 be renumbered as section 28.

Hon. Mr. Elgie: I think the reason for adding the word "undertake" should be apparent. It was our view that the commission might itself want to undertake some research programs other than those it has.

Mr. McClellan: I assume that "undertake" does not mean that the research will be buried.

Hon. Mr. Elgie: This is not the funeral act we are on.

Mr. McClellan: No, but it is the practice.

Section 26(d), as amended, agreed to.

Section 26(e) to (j), inclusive, agreed to.

Section 26, as amended, agreed to.

Section 28, as renumbered, agreed to.

On sections 27 and 28:

Mr. Chairman: Mr. Johnson moves that sections 27 and 28 of the bill be renumbered as sections 29 and 30.

Motion agreed to.

On section 29 as renumbered:

Mr. Chairman: Ms. Copps moves that section 29 be deleted.

Ms. Copps: I think we are setting a dangerous precedent by allowing any servant of the people that kind of immunity from the law either in a civil suit or any proceeding with respect to information obtained in the course of an investigation.

Hon. Mr. Elgie: Just so that we understand what we are doing here, this is in line with the McRuer report on civil rights, that administrative tribunals which have special access to information should not be required to give testimony about the information they obtain. That is the reason for it.

I understand the dilemma people have about that, but they do have special access, and if someone starts a civil action, they have access to the same people either through preliminary hearings before the trial or through the deposition of documents and so forth.

Ms. Copps: It seems to me that the only position we heard with respect to this situation one way or the other was from a complainant who felt she had been aggrieved and did not have access to pre-inquiry information that had been made available to other people, and it is in that spirit I am speaking.

Hon. Mr. Elgie: You heard John Laskin. The substance of the information obtained is revealed to be exact.

Ms. Copps: The case I am referring to specifically--I think the name is Krank or Kernik--

Hon. Mr. Elgie: I remember her.

Ms. Copps: She appeared right near the building.

Mr. Chairman: Any further discussion on the motion?

Motion negatived.

Section 27 agreed to.

Section 29, as renumbered, agreed to.

Section 28 agreed to.

Section 30, as renumbered, agreed to.

On section 29:

Mr. Chairman: That puts us in part IV, the old section 29.

Mr. J. M. Johnson moves that section 29 be renumbered as section 31.

Motion agreed to.

Section 29 agreed to.

Section 31, as renumbered, agreed to.

8:40 p.m.

On section 30:

Mr. Chairman: Mr. Stevenson moves that section 30 be renumbered as section 32.

Motion agreed to.

Mr. Chairman: Mr. Stevenson moves that the number 31 in the first line of section 30(1) of the bill be renumbered as 33.

Interjections.

Mr. Chairman: In section 32(1) of the new bill you will notice it says, "subject to section 33," and in the old bill it says "subject to section 31." So it is just changing that 31 to a 33.

We are on old section 30, new section 32, but for some reason the government does not want to change it to section 32 until the end. That is my understanding of where we are.

Mr. McNeil: Do they want to explain the reasons?

Motion agreed to.

Section 30(1) agreed to.

Section 30(2) agreed to.

Section 32(1) and (2), as renumbered, agreed to.

Mr. Chairman: Mr. Stevenson moves that section 30(3) of the bill be struck out and the following substituted therefor: "A person authorized to investigate a complaint may,

"(a) enter any place other than a place that is being used as a dwelling at any reasonable time, for the purpose of investigating the complaint;

"(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

"(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

"(d) question a person on matters that are or may be relevant to the complaint, subject to the person's right to have counsel or a person representative present during a questioning, and may exclude from the questioning any person who may be adverse in the interest to the complainant.

"(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of an occupier except under the authority of a warrant issued under subsection 8.

"(5) Subject to subsection 4, if a person who is or may be a party to a complaint denies entry to a place or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the commission may request the minister to appoint a board of inquiry or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection 8.

"(6) If a person refuses to comply with a request for production of documents or things, the commission may request the minister to appoint a board of inquiry or to authorize an employee or member to apply to a justice of the peace for a search warrant under subsection 7.

"(7) Where a justice of the peace is satisfied upon the evidence upon oath that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he may issue a warrant in the prescribed form



authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

"(8) Where a justice of the peace is satisfied by evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

"(9) A warrant issued under subsection 7 or 8 shall be executed at reasonable times as specified in the warrant.

"(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

"(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

"(12) Subsection 11 is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

"(13) Copies of, or extracts from, documents removed from premises under clause (3)(c), or subsection 7, certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts."

Mr. J. M. Johnson: Mr. Chairman, I have a question on section 32(3)(d), the last portion relating to "any person who may be adverse in interest to the complainant."

Hon. Mr. Elgie: In 1974, as a result of the problems the commission was encountering with, for example, the employer insisting on being present during the questioning of an employee who was a witness, and the fact that the commission investigators were encountering intimidation of those witnesses, an amendment was passed allowing the commission to exclude other persons when a witness was being questioned. This revision retains that principle, but it also says that person who is being questioned may have a personal representative or counsel present who is not adverse in interest.

In other words, an employer would not be allowed to have his solicitor there during the questioning of another witness. He would be entitled to have a counsel or a personal representative present while he was being questioned. But in the case of someone adverse in interest--in other words, an employer--while an employee was being questioned, the commission officer could exclude that person who might intimidate the witness. I am not saying they would, but they might.

Mr. J. M. Johnson: I assume that the intent of this is to prevent intimidation.

Hon. Mr. Elgie: That is right. Reversing the example I have used, it also gives the employer the right to have a counsel or a personal representative if he, too, was being questioned and to exclude the complainant during the questioning.

Mr. Chairman: Is there anything else on subsection 3?

Hon. Mr. Elgie: I think you had an amendment somewhere in here, Ms. Copps.

Ms. Copps: Yes, but we did not carry subsections 1 and 2 yet.

Mr. Chairman: Yes, we did.

Ms. Copps: We did? Then subsection 3 is carried. These are not from the old things, so it is irrelevant at this point.

Hon. Mr. Elgie: You told me yesterday you intended to make an amendment.

Ms. Copps: I will, further along.

Hon. Mr. Elgie: Okay.

Mr. Chairman: So you are happy with the new 32(3)?

Ms. Copps: Yes.

Subsection 3, as amended, agreed to.

Subsection 4, as amended, agreed to.

8:50 p.m.

Ms. Copps: My amendment is on subsection 5.

Mr. Chairman: Ms. Copps moves that subsection 5 be amended as follows:

"(5) Subject to subsection 4, if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the commission must apply to a justice of the peace for a warrant to enter under subsection 8."

Ms. Copps: Basically, the amendment deletes, "may request the minister to appoint a board of inquiry or may authorize an employee or member to apply." That means that if a person went to a place of employment and that employer, at that time, did not want of his own free volition and free will to give entry or access to the place, the commission must actually obtain a warrant.

There would be no alternative of convening a board of inquiry. We believe that a board of inquiry normally is convened when there has been enough proof put together that a person may be

guilty of a violation. We feel that there is a notion of presumed guilt here if you call a board of inquiry simply because someone happens to feel that you should not be coming into his premises. Basically, the amendment would be "must apply to a justice of the peace for a warrant to enter under subsection 8."

Hon. Mr. Elgie: Mr. Chairman, I have to say that to impute to a board of inquiry a preconception about the decision that is to be reached is not really intended; nor would I accept that a board of inquiry has any implication that there is a determination in any way in that board's mind that there is guilt.

Later sections, as you know, in this particular situation allow the board to adjourn so that the parties and the board as indicated may review any documents. We have included in these two options full principles of natural justice, in other words, either the obtaining of a warrant or the presentation of documents only at the subpoena issued by a board on inquiry, at which point all of the normal rules of natural justice apply under the Statutory Powers Procedure Act.

As I have said before in my statement and on other occasions, there will be times when there is not sufficient information available to justify a warrant. In the absence of some alternative, the commission would be powerless. There are numerous examples one can think of--for instance, a one-employee business--where there is nobody else to give any evidence, and the only other information that is available is information on the records.

There is great doubt as to whether or not a justice of the peace would consider on that basis that he is satisfied on evidence upon oath that there are in that place documents, and that there are reasonable grounds to believe they will afford relevant information. So I have to stand firm on the amendment as we have submitted it. I feel that without that the commission's role is seriously jeopardized.

Ms. Copps: To respond to that, Mr. Minister, from my reading of the legislation to date, the reason that under other circumstances a board of inquiry is called is that after there has been an investigation there seems to be a reasonable basis for complaint. Therefore, you convene a board of inquiry to air all facts, to get it all in writing and to get the transcript so that you are able to proceed with the complaint based on an alleged infringement of human rights.

This suggests that under some circumstances you may not be able to get a warrant in the course of the investigation of the complaint. I am sure if you went to the police department they would suggest the same thing, that in some cases they are not able to get a warrant, and presumably the notion of obtaining a warrant is deemed to protect all of our individual liberties. I have tried to present it in a reasonable way in that I would suggest in the majority of circumstances you will not run into problems. You will carry out an investigation, and most people would probably have no objection to either allowing entry or to having documents copied.



If, however, there is a problem, I maintain that it should be an individual's right to deny entry if there is not a warrant, and that the situations where this would arise would certainly not be numerous. The alternative you have suggested is to convene a board of inquiry. I am not suggesting that the board of inquiry is presuming guilt. All I am saying is that in any other section of this code the only time a board of inquiry is convened is when there have been enough facts gathered to build a case for an alleged human rights violation. In this case, we have the situation simply where a person does not want his place of business entered or investigated without some background material to back up that investigation.

I suggest that if there is a problem with justices of the peace, then maybe we should be attacking it in that way. I have heard the argument from some groups that in many instances it would be hard for a human rights commissioner to obtain a warrant because justices of the peace may not be positively disposed. If that is the case, then we should be attacking that problem and not trying to circumvent it through the Human Rights Code.

In any case, the arguments on both sides have been well aired and I do not want to tarry with this. I do feel, however, that if you allow people the option of requesting a warrant if they feel that your coming into their premises is an intrusion of their privacy, it is a reasonable request and one that can be complied with relatively easily and speedily, according to most lawyers who appeared before the committee.

Hon. Mr. Elgie: I have no further comments, Mr. Chairman. I have made my position very clear that I think it is absolutely essential that this subsection and the subsequent one remain as they are with that option in place.

Mr. Chairman: Is there any further discussion?

Mr. J. M. Johnson: Mr. Chairman, I have a question to the minister. Is the provision, "or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection 8," not less power than they have today?

Hon. Mr. Elgie: They could do that today.

Mr. J. M. Johnson: Without a warrant?

Hon. Mr. Elgie: No. If someone blocked their entry today, they would have to go to a warrant. We are just spelling it out so the people understand that they have the right to tell someone, "You cannot enter." It was implicit before, but not explicit. Now we are making it very explicit that if someone says, "No, you cannot come in," then the commission has two options, (a) to get a warrant or (b) to appoint a board of inquiry over the issue of entry.

Mr. J. M. Johnson: If someone were to refuse or deny entry, then an officer of the commission would simply request that the justice of the peace write a warrant to enter the premises.

Hon. Mr. Elgie: That is right. We are talking about business premises too, Jack. We are not talking about a private dwelling.

Ms. Copps: That is the choice. He does not have to get a warrant. He has a choice to either convene a board of inquiry or get a warrant. There is no compulsion on him to actually get a warrant. In fact, according to the wording in this particular section, there is no compulsion on him to convene a board of inquiry because it does not say must, it says "may."

Hon. Mr. Elgie: That is correct. He can drop it if he wants.

Mr. Chairman: Shall subsection 5 carry?

Hon. Mr. Elgie: No, Ms. Copps has an amendment on the floor..

Mr. Chairman: Oh, yes. Are you ready to vote on the amendment?

Motion negatived.

Subsection 5, as amended, agreed to.

Ms. Copps: Can I just introduce the same amendment on subsection 6? I think everyone understand the nature of the amendment. Do you want me to read it into the record?

Mr. Chairman: No.

Hon. Mr. Elgie: No.

Ms. Copps: It is the same amendment and the same argument.

Mr. Chairman: The old deletion amendment.

Motion negatived.

Subsection 6, as amended, agreed to.

Subsections 7 to 12, inclusive, as amended, agreed to.

9 p.m.

Ms. Copps: This is going so quickly. Never mind, just carry it.

Mr. Chairman: The record shows that Ms. Copps is opposed to--

Ms. Copps: The record does not show that. I am on the wrong one, so just carry it.

Mr. Chairman: Sorry, I was just trying to get it on there for you.

Ms. Copps: Why do you keep looking at me?

Mr. Chairman: I would like to move as quickly as possible, but I do not want to be accused of carrying things too quickly.

Subsection 13, as amended, agreed to.

Section 31, as amended, agreed to

Section 32, as renumbered, agreed to.

On section 31.

Mr. Chairman: Mr. Lane moves that section 31(2) of the bill be amended by striking out "34" in the third line and substituting therefor "36" and that section 31 of the bill be renumbered as section 33.

Section 31, as amended, agreed to.

Section 33, as renumbered, agreed to.

On section 32:

Mr. Chairman: Mr. Lane moves that section 32 of the bill be renumbered as section 34.

Section 32, as amended, agreed to.

Section 34, as renumbered, agreed to.

On section 33:

Mr. Chairman: Mr. Stevenson moves that section 33(2) of the bill be struck out and the following substituted therefor:

"(2) Where the commission decides to not request the minister to appoint a board of inquiry, it shall advise the complainant and the person complained against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 36 for having the decision reconsidered."

Mr. Steveson also moves that the section 33 be renumbered as section 35.

Hon. Mr. Elgie: I think the amendment is really self-explanatory. We just felt that if a commission decides not to proceed with a board of inquiry that the person who is complained against should have some record that the complaint was not sustained. We recall a case during the public hearings of a TTC driver who complained that no one had ever told him he had not been guilty of an offence. That is to clear up that kind of issue.

Section 33, as amended, agreed to.

Section 35, as renumbered, agreed to.



Mr. Chairman: Did you have a question, Ms. Copps, on the new section 34?

Ms. Copps: No, not on the new 34, but a slight amendment on the new 35.

Mr. Chairman: I thought I carried it.

Ms. Copps: The amendment was to change "may" to "must" under 35(1), to read, "the commission must request the minister." That is simply to make sure that if there is enough information there, a board of inquiry be convened. From the way it is worded at present it would leave the option up to the commission. Even if the evidence warrants an inquiry, they still do not have to convene it unless you replace "may" with "must" under section 35(1) of the new one.

Mr. Chairman: Any objection to 35 being uncarried and going back to 35(1)? I suggest we do so that we can continue.

Ms. Copps moves that the renumbered section 35(1) be amended by changing "may" to "must" in the fourth line.

Hon. Mr. Elgie: The commission, Mr. Chairman, occasionally runs into situations where it gets up to this point and the complainant either cannot be found or decides for some reason he does not want to proceed with it. Even when it has reached that final stage, I have to tell you that in the documents that come before me there occasionally are cases that get to that point. I think we should leave the commission free to make those decisions.

Ms. Copps: The reason I raise that point again goes back to the individual who appeared before the committee who had been told at one point that there was going to be a board of inquiry convened--

Hon. Mr. Elgie:: Claimed to have been told.

Ms. Copps: Right, and then it never materialized.

Hon. Mr. Elgie: The fact is, though, and I think counsel will support me, that individual had two options open at that point which were not exercised. One was to go to the Ombudsman and the second was to ask for a judicial review. Neither option was exercised. I think there is ample protection for those people, or, under this new bill, they would have the right to request reconsideration. So there are three options now for somebody who is not satisfied.

Ms. Copps: Do you want to vote on the amendment?

Mr. Chairman: Yes. New section 35 has been uncarried. We are voting on Ms. Copps' amendment to 35(1), to have "may" changed to "must". All in favour? Those opposed?

Motion negatived.

On section 34:

Mr. Chairman: Mr. Stevenson moves that section 34 of the bill be stuck out and that the following section be substituted therefor:

" 36(1) "Within a period of 15 days of the date of mailing the decision and reasons therefor mentioned in subsection 33(2) or subsection 35(2), or such longer period as the commission may for special reasons allow, a complainant may request the commission to reconsider its decision by filing an application for reconsideration containing the concise statement of the material facts upon which the application is based.

"(2) Upon receipt of an application for reconsideration, the commission shall as soon as is practicable notify the person complained against of the application and afford the person an opportunity to make written submissions with respect thereto within such time as the commission specifies.

"(3) Every decision of the commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and to the person complained against and the decision shall be final."

Did you include an amendment there to renumber?

Mr. Stevenson: The renumbering was actually in there. It was 34 and it is now 36.

Mr. McNeil: In this subsection 1, are section 33(2) and section 35(2) the renumbered bill or the original bill?

Mr. Chairman: That would be the renumbered bill. I think we had better check that.

Hon. Mr. Elgie: I think he is right. Mr. Hess, do you know what we are saying here? Ron McNeil has just asked, if you look at 36(1), if 33(2) and 35(2) are referred to within subsection 36.

Mr. Hess: Those are the renumbered ones. They refer to the revised bill.

Mr. McNeil: Those are the renumbered bill.

Mr. McClellan: In subsection 2 what does "as soon as is practicable" mean? Why did you not put a time frame on that? I do not see why the commission should have a basically open-ended time frame for a reply. It seems to me a fairly routine matter that we are dealing with here.

Hon. Mr. Elgie: What about forthwith?

Ms. Copps: How about within 60 days?

Mr. McClellan: Why do you not put a time frame on it?

Hon. Mr. Elgie: Because the commission does not meet every day. It meets one or two times a month, sometimes more. It is uncertain when they meet. The full commission meets once a month or on other occasions if necessary, and I guess that is the reason for leaving that kind of flexibility, is it not, Mr. Stratton?

9:10 p.m.

Mr. Stratton: I think that is the reason.

Mr. McClellan: "Forthwith." You have no problem there?

Hon Mr. Elgie: Forthwith?

Mr. McClellan: What does "forthwith" mean?

Hon. Mr. Elgie: As soon as it is practicable. What is the problem?

Ms. Copps: The problem is the one that was raised. I think that people were very happy about the fact that the time limit was specified in the complaint period in the first subsection. You have specified a time limit on a complaint. A number of people who came before the committee suggested that one of the problems with the commission is that it may take a year or two sometimes to resolve a problem one way or the other. So maybe we could suggest that they would set a time limit of 90 days. Would that be reasonable?

Mr. Armstrong: That would suggest a period longer than I think would be desirable.

Ms. Copps: I would amend it then to say "60 days."

Interjection: How about 30 days?

Hon. Mr. Elgie: "Shall within 30 days?" Would "within 30 days" give anybody any trouble?

Mr. Hess: What would happen is a practical matter. When they get an application for reconsideration, it will probably go, and there may be something new raised and they will have to reinvestigate.

Hon. Mr. Elgie: I see.

Mr. Hess: You cannot tie these things down. They are not cut in stone. They seem to think it is a very simple little thing, that it is a piece of paper that comes in, so you are just sending out a piece of paper. It is not so all the time.

Hon. Mr. Elgie: I guess the point is it may require some reinvestigation.

Mr. McClellan: It is not an academic question that we are raising. One of the problems with the commission has been the length of time that its procedures take. If it is possible to put



in the legislation the kinds of things that are supposedly built into the occupational health and safety designation of standards procedures which work so well, then it is worth an effort. We have to pursue this in an exploratory kind of way.

Hon. Mr. Elgie: In the light of what of what Mr. Hess has said and that I had forgotten about, they might have to carry out some further investigation. I do not think we can tie their hands because we do not know what the nature of the investigation might be, nor the particular case load they have at the time. So I think we do have to leave it as is.

Ms. Copps: Bearing that in mind, I think that was one of the complaints that was made by a number of groups that appeared before the committee, that sometimes the case load certainly does impede their progress on a certain case; and if they were tied in to a certain time limit, it may force the minister to release extra funding for the commission for purposes of investigation.

There was a time limit on the initial investigation which I cannot find offhand here. Is it 60 or 90 days? I remember a number of people commented on the fact that they were happy with it.

Mr. Hess: No. What you are talking about is the time for the complaint.

Ms. Copps: Sure, the original complaint.

Hon. Mr. Elgie: One of the things that has given the commission great trouble, and I am sure Jim Stratton could speak to it, is that there is not a time limit now with regard to when a complaint took place. People can come in with a complaint that took place 10, 20 or 30 years ago, and that has been one of the major problems the commission has. Is that right?

Mr. Stratton: Yes, that is correct.

Hon. Mr. Elgie: Within this code, we have set a time limit on that.

Mr. Stratton: They will be complaining over situations that will themselves be four or five years--

Ms. Copps: But that is not the time limit that was referred to. There was a time limit to begin an investigation, I believe. Is this the six months, that it had to be a more recent complaint?

Hon. Mr. Elgie: There is a six-months section in this bill.

Ms. Copps: Yes, I realize that.

Hon. Mr. Elgie: I do not think there was ever any time limit for the commission to carry out its reconsideration.

Ms. Copps: No, not the reconsideration but in the initial investigation.

Hon. Mr. Elgie: No, there never was. There are time limits with regard to the appointing of a board of inquiry and the issuing of the decision of a board of inquiry, and that has been a major--

Ms. Copps: That's where the 30 days came in. Is not the same principle involved? You are asking the commission to reconsider a decision not to convene a board of inquiry?

Hon. Mr. Elgie: Yes.

Ms. Copps: Therefore I would suggest there should be some kind of time limit on it. In view of the fact that the board of inquiry decision is 30 days, I would suggest, in an effort to be reasonable, that someone who puts in a request for a reconsideration should be given some kind of an indication within 90 days. I think that is being generous.

Hon. Mr. Elgie: What you are overlooking is that the commission may, after receiving this, (a) decide that further investigation is needed or (b) decide that it needs to meet with the parties face to face. There are a variety of things they may do as a result of receiving the complaint. I do not think you can tie their hands in terms of time.

Ms. Copps: If no action is commenced within that specified period, that is the problem. The problem that was outlined by a number of groups related not to further investigation in terms of investigation, but it was the fact that they had not even started dealing with the complaint within months after the complaint was made.

I would think if you take a look at subsection 2 again, what you are suggesting here is, "shall within 90 days notify the person complained against of the application and afford the person to make written submissions with respect thereto within such time as the commission specifies." What you are saying is they have to respond to that complaint within a certain period of time. Possibly in terms of just the response rate, maybe 30 days would be reasonable. That is not suggesting the commission has to resolve the complaint within 30 days, but it is saying that it has to respond to the person within 30 days.

Hon. Mr. Elgie: They may decide not to proceed with it then. They are not required to do any of that.

Ms. Copps: "And afford the person the opportunity to make written submissions with respect thereto." I just left it "within such time as the commissions specifies."

Hon. Mr. Elgie: My view still stands. I do not think we can totally tie the commission's hands. There are such a variety of situations that may present themselves that I think they need some flexibility.

Ms. Copps: That would simply be requesting them to respond within 30 days.

Hon. Mr. Elgie: I understand.

Mr. Chairman: Do you wish to move that amendment?

Ms. Copps: Yes.

Mr. Chairman: Ms. Copps moves that the words "as soon as is practicable" in section 36(2) be replaced by the words "within 30 days"

Mr. J. M. Johnson: Are you saying you would change "as soon as is practicable"--

Ms. Copps: To "within 30 days." They just contact the person within 30 days. They do not have to complete the investigation. They just have to get in touch with them and say, "Look, we have received your complaint and we are proceeding with it."

Mr. Chairman: Fine. I think we have had enough discussion on it. All in favour of the amendment? Opposed?

Motion negatived.

Section 36(1), (2) and (3), as renumbered, agreed to.

Mr. Chairman: Ms. Copps moves the addition of a new section 36(4) to read: "The decision of the commission under section 36(1) shall be subject to review in accordance with the provisions of the Judicial Review Procedure Act."

Hon. Mr. Elgie: Just a minute. Could we just find that?

Ms. Copps: It is that section 36 be amended by adding a section 36(4), which basically means that if the commission decides not to convene a board of inquiry and reconfirms that decision, that decision will be subject to judicial review.

Hon. Mr. Elgie: It is already subject to judicial review. I think the amendment is superfluous.

Ms. Copps: If the commission chooses not to convene a board of inquiry--

Hon. Mr. Elgie: That is subject to judicial review.

Mr. McClellan: Under what section?

Hon. Mr. Elgie: It does not have to be. It is already under--

Mr. Hess: The Judicial Review Procedure Act. Perhaps I might explain the purpose. By saying that the decision shall be final, that imports the language in the Judicial Review Procedure Act because you can apply for a judicial review of a decision of a statutory tribunal which is final. Since this decision would affect the rights of a person who has been denied a board of inquiry, it would be a matter that would be reviewable under that act; so this amendment is unnecessary.

9:20 p.m.



Ms. Copps: The amendment at least spells out to those who may not otherwise know that they do have recourse to judicial review if, in fact, the commission chooses not to convene a board of inquiry on an investigation.

Hon. Mr. Elgie: The Statutory Powers Procedure Act could be added all through the act, so could the Judicial Review Procedure Act and so could the Ombudsman's Act. You could add all sorts of things, but that is just part of our statutory and common law. I do not think we can start adding things all through the bill because it is already the law.

Ms. Copps: Mr. Chairman, I was under the impression in the last six months of hearings that we have had a number of complaints from groups who are of the impression that unless a board of inquiry is convened there is no recourse to further judicial review.

Mr. Hess: That is under the old code. It has nothing to do with the wording of this code. A decision of the Court of Appeal in the ex parte Kitchener food market case made it quite clear you could not apply for judicial review on the refusal to appoint a board of inquiry under the old code. But this is an entirely different code with different language and so the principles would be quite different.

Ms. Copps: Section 41 says, "from a decision or order of the board," which is the board of inquiry, not the commission. Section 41 is pursuable to Divisional Court after a board of decision has been made. If there is no board of inquiry convened, I think there is some question as to whether or not you can proceed to divisional court. There was certainly was some question in the case of Bhaduria versus Seneca College.

Hon. Mr. Elgie: That case was never taken to the commission.

Ms. Copps: That case was taken to the commission under six different forms prior to--

Hon. Mr. Elgie: Yes, but not at that particular time.

Ms. Copps: Nevertheless, I think the Divisional Court or the Supreme Court ruled at that time that the human rights legislation fell within the purview of the human rights commission. It was not a tort by law.

Hon. Mr. Elgie: That is a different problem entirely. First of all, the particular Bhaduria case was never taken to the commission. Secondly, the Bhaduria case was trying to establish a principle of common law, namely, that a contravention laid out in the human rights code was, in itself, an actionable tort in civil law. That is what the Supreme Court said was not true.

Ms. Copps: From my reading of section 41, Mr. Minister, it states that a board decision can be pursued to the Divisional Court, but that specifies after a board of inquiry. If this is redundant legislation, why is it that under 41 it specifies board of inquiry and does not say that any decision of the commission shall be pursuable to Divisional Court?

Hon. Mr. Elgie: Because this is a commission decision as opposed to a board of tribunal's decision. Unless there is the right of appeal given from a tribunal's decision, there is not any. Some legislation does not give statutory tribunals the right to appeal. We specifically give it in fact and law to the tribunal, but the decision of a commission is automatically subject to judicial review. We could say that the decision of a board of tribunal is appealable only on basis of fact or only on the basis of law, one or the other, but we have said both because we think that that should be so. That has nothing to do with the commission's decision not to proceed, which is something that is already subject to judicial review. In the commission, as opposed to the tribunal, natural justice has taken place with cross-examination, witnesses and counsel.

Mr. McClellan: One could proceed against the commission's decision not to appoint a board of inquiry under the Judicial Review Procedure Act?

Hon. Mr. Elgie: That is right.

Ms. Copps: I would let the amendment stand as proposed.

Motion negatived.

Section 34, as amended, agreed to.

Section 36, as renumbered, agreed to.

Mr. Chairman: Mr. Lane moves that section 35 of the bill be renumbered as section 37. The only change is a renumbering.

Motion agreed to:

Section 35 agreed to.

Section 37, as renumbered, agreed to.

On section 36:

Mr. Chairman: Mr. Lane moves that section 36(1) of the bill be amended by striking out the number 38 in the fifth line and substituting therefor the number 40.

Motion agreed to.

Section 36(1) agreed to.

Section 38(1), as renumbered, agreed to.

Mr. Chairman: Mr. Stevenson moves that subsection 36(2) of the bill be amended by striking out clause (c) and relettering the clauses accordingly, and that clause (e), as relettered, be amended by adding in the second line after "or subsection 4(2) or of alleged conduct under section (6)."

Motion agreed to.

Ms. Copps: Mr. Chairman, that amendment was carried under section 38, but I have a further amendment to section 38 which was previously numbered section 36.

Mr. Chairman: What part?

Ms. Copps: At the very end.

Mr. Chairman: We will pick it up. I think the next one will be subsection 4.

Ms. Copps: You are on 38(4)?

Mr. Stevenson: There is an amendment to the old 36(3) and then there is another amendment that rennumbers it 38. So there are two of them coming here.

Mr. Chairman: Let us deal with them and then we will come back to Ms. Copps.

Mr. Stevenson moves that subsection 36(3) of the bill be amended by striking out "2(e) or (f)" in the second line and substituting therefor "2(d) or clause 2(e)."

Section 36(3), as amended, agreed to.

9:30 p.m.

Mr. Chairman: Mr. Stevenson moves that section 36 be renumbered as section 38 and the following subsections be added thereto:

"(4) Where a board exercises its power under clause 12(1)(b) of the Statutory Powers Procedure Act to issue a summons requiring the production in evidence of documents or things, it may, upon the production of the documents or things before it, adjourn the proceedings to permit the parties to examine the documents or things.

"(5) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the proceedings for that purpose."

Is there any discussion on that?

Hon. Mr. Elgie: Ms. Copps and Mr. McClellan, those amendments are the amendments relating to the possibility of appointing a board of inquiry as an option if entry or production of documents is refused. It simply says that the board may require the documents to be presented before it.

Ms. Copps: Yes, I understand it.

Section 36(4) and (5) agreed to.

Ms. Copps: I have an amendment to add a subsection which would previously have been section 36(4). Now it is 38(6).



Mr. Chairman: Ms. Copps moves that section 38, as renumbered, be amended by adding thereto the following subsection:

"(6) It is sufficient for the commission to establish a prima facie case,

"(a) by evidence of conduct that but for its motive would constitute an infringement of right by the complainant; and

"(b) that the person who is alleged to have infringed the right engaged directly or indirectly in the conduct and by alleging with or without evidence the prohibited ground of discrimination constituting the mode for the conduct and the burden of the proof to disprove the prima facie case on the person who is alleged to have infringed the right".

Hon. Mr. Elgie: Do you want to say we can use the arguments previously used?

Ms. Copps: Yes. On the issue of the prima facie case, again, it is trying to establish a case for reasonable accommodation in kind of a through-the-back-door method. That is not putting my case very well, but we have been through most of the arguments and I am getting a little discouraged as to my chances for success, so I will not really want to comment any further.

Hon. Mr. Elgie: I do not think you should get discouraged. You should get the hero medal for frequent attempts from various directions at the same issue. What we are really dealing with here is the introduction of the principle of conduct, which is believed by some could relate only to the issue of access and make access itself a prima facie evidence of discrimination.

Ms. Copps: Yes.

Hon. Mr. Elgie: We would oppose that on the grounds that we have discussed on several sections.

Mr. McClellan: It is reactionary and totally--

Hon. Mr. Elgie: Consistent.

Mr. Chairman: She should try it. She would like it.

Mr. Chairman: Any further discussion. Ready? All those in favour of the amendment? Opposed? It is a long count. Sometimes it takes a while to get around the table.

Motion negatived.

Section 36, as amended, agreed to.

Section 38, as renumbered, agreed to.

On section 37:

Mr. Chairman: Mr. McLean moves that section 37(1) be amended by striking out the words, "if so required" in the second line and by adding the words, "upon request" after the word "furnished" in the last line.

Motion agreed to.

Mr. Chairman: Mr. McLean further moves that section 37(2) be struck out and that section 37 be renumbered as section 39.

Hon. Mr. Elgie: It is the same reason I gave you for not needing the statutory review. It is already there and we do not need that.

Section 37, as amended, agreed to.

Section 39, as renumbered, agreed to.

Hon. Mr. Elgie: Excuse me, could I just interrupt for a moment? You will recall we changed, in section 16, the issue of obstructed access. We changed the wording around. Do you remember, Ms. Copps?

Ms. Copps: Yes, I distinctly remember that.

Mr. McClellan: We all remember that, yes. It is shameful.

Hon. Mr. Elgie: Just so we do not go through that again.

On section 38:

Mr. Chairman: Mr. McLean moves that clause (b) of subsection 38(1) of the bill be struck out and the following substituted therefor:

"(b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish."

Section 38(1), as amended, agreed to.

Mr. Chairman: Mr. J. M. Johnson moves that section 38(2) be struck out and the following be substituted therefor:

"(2) Where the board of inquiry at the conclusion of the hearing finds that a right of the person under part I has been infringed by discrimination because of handicap, the board may then proceed to inquire whether,

"(a) the person does not have access to premises, services, goods, facilities or accommodation of the party who is found to be a contravener, because of handicap; or

"(b) the premises, services, goods, facilities or accommodation of the party who is found to be a contravener lack amenities that are appropriate to a person because of handicap,

"and after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures as will make such provision for access or amenities or as are set out in the order."

Hon. Mr. Elgie: That is just to bring the wording in line with the new section 16.

Ms. Copps: Can I just make a small amendment?

Mr. Chairman: Sure.

Ms. Copps: That is old section 38(2), new section 40(2), at the end.

Mr. Chairman: Ms. Copps moves that section 38(2), as amended, be further amended by deleting the words "the board may," and substituting therefor, "the board must."

Mr. Chairman: It would now read, "and after making a finding thereon the board must, unless the costs occasioned thereby..."

Ms. Copps: "...order that the party take such measures as will make such provisions for access or amenities or as are set out in the order." So the motion of compulsion will be included with the word "must," rather than "may," which again leaves the subject to a very subjective assessment.

Mr. McLean: That is pretty definite.

Ms. Copps: Yes.

Hon. Mr. Elgie: We have to leave it to the discretion of the tribunal that has heard all the evidence and understands all the facts in that particular situation. We have to give that kind of discretion to a tribunal as we do a court.

Ms. Copps: But, again, since you already have the guarantee under section 16, you are talking about a situation where a person is found to be a contravener, so it is more than simply the question of access. The person already has to be found to have contravened the Human Rights Code, vis-a-vis the handicapped. So what you are saying is after a person has been found to have committed a human rights violation against the handicapped, you must order, unless the costs occasioned thereby would cause undue financial hardship, the measures.

As it stands now, there is no compulsion whatsoever. Even after a person or a company has been guilty of a human rights violation, there is no compulsion to change the situation.

9:40 p.m.

Hon. Mr. Elgie: As I said, I think we have to leave it to the discretion of the court, in the light of all the evidence that they have heard from people who have appeared before them, to make those decisions, as we expect our courts in other judicial settings to do.



Mr. J. M. Johnson: Mr. Chairman, I just feel, if we are going to have a fair and equitable bill, that "may" is better than "must."

Mr. Chairman: We are voting on the amendment to change "may" to "must." Are you ready for the question?

All in favour? Opposed?

Motion negatived.

Section 38(2), as amended, agreed to.

Mr. Chairman: Mr. J. M. Johnson moves that section 38(3) of the bill be struck out and the following substituted therefor:

"(3) In addition to the powers conferred by subsection 2, where the board of inquiry at the conclusion of the hearing under subsection 1 finds that a right of a person under part I has been infringed by discrimination because of handicap, the board may then proceed to inquire and make a finding as to whether the equipment or the essential duties attending the exercise of the right could be adapted to meet the needs of the person whose right is infringed and, after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures to adapt the equipment or duties as will meet such needs and as are set out in the order."

Section 38(3), as amended, agreed to.

Mr. Chairman: Mr. McNeil moves that section 38(4) of the bill be struck out and the following substituted therefor:

"(4) Where a board makes a finding under subsection 1 that a right is infringed on the ground of harassment under subsection 2(2) or subsection 4(2) or conduct under section 6, and the board finds that a person who is a party to the proceeding,

"(a) knew or was in possession of knowledge from which he ought to have known of the infringement; and

"(b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it,

"the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the commission may investigate the complaint and, subject to section 35(2), request the board to reconvene and if the board finds that a person who is a party to the proceeding,

"(c) knew or was in possession of knowledge from which he or she ought to have known of the repetition of infringement; and

"(d) had the authority by reasonably available means to penalize or prevent the continuation or repetition of the conduct and failed to use it,

"the board may make an order requiring the person to take whatever sanctions or steps are reasonably available to prevent any further continuation or repetition of the infringement of the right.

Section 38(4), as amended, agreed to.

Mr. Chairman: Mr. McNeil moves that section 38 be amended by adding the following subsections as subsections 5 and 6, and that subsection 5 be renumbered as subsection 7:

"(5) Where a board of inquiry for any reason is unable to exercise its powers under this section or section 38, the commission may request the minister to appoint a new board of inquiry in its place.

"(6) Where, upon dismissing a complaint, the board of inquiry finds that,

"(a) the complaint was trivial, frivolous, vexatious or made in bad faith; or

"(b) in the particular circumstances undue hardship was caused to the person complained against,

"the board of inquiry may order the commission to pay to the person complained against such costs as are fixed by the board."

Mr. McNeil also moves that section 38 of the bill be renumbered as section 40.

Mr. McClellan: I can understand clause (a), I guess, but I really do not understand clause (b), which says that if the board dismisses the complaint and finds that undue hardship was caused to the person complained against, without any requirement, it also finds that the complaint was trivial, frivolous, vexatious or made in bad faith. In other words, all they have to do is find that the complainant suffered an undue hardship and the complainee is eligible to be penalized.

Hon. Mr. Elgie: No.

Mr. McClellan: Am I wrong?

Hon. Mr. Elgie: The commission.

Ms. Copps: No, but what he is saying is that if there was actually legitimate--

Hon. Mr. Elgie: No. I can think of a couple of cases where a complaint was dismissed and there was no trivial or vexatious element to it. In that particular small community, business was drastically affected--in fact, the business closed. We think there are circumstances where there is undue hardship.

Mr. McClellan: I was misreading the amendment and I thank the minister for clearing that up.

Section 38, as amended, agreed to.

Section 40, as renumbered, agreed to.

On section 39:

Mr. Chairman: Mr. Lane moves that section 39 of the bill be amended by changing the word "Supreme" to the word "Divisional" where it appears therein, and that said section be renumbered as section 41.

Section 39, as amended, agreed to.

Section 41, as renumbered, agreed to.

On section 40:

Mr. Chairman: Mr. Lane moves that section 40 of the bill be amended by striking out "29" in the fourth line and substituting "31" therefor, and that said section be renumbered as section 42.

Section 40, as amended, agreed to.

Section 42, as renumbered, agreed to.

On section 41:

Mr. Chairman: Mr. Stevenson moves that section 41(1) of the bill be amended by striking out "subsection 6 of section 30" in the second line and substituting "subsection 11 of section 32" therefor, and that the section be renumbered as section 43.

Section 41(1), as amended, agreed to.

Section 41, as amended, agreed to.

Section 43, as renumbered, agreed to.

On section 42:

9:50 p.m.

Mr. Chairman: Mr. Stevenson moves that section 42 of the bill be struck out and the following substituted therefor, and that the section be renumbered as section 44:

"(1) For the purposes of this act, except subsection 2(2), subsection 4(2), section 6 and subsection 43(1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.



"(2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, a board of inquiry in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1)."

Section 42, as amended, agreed to.

Section 44, as renumbered, agreed to.

On part V, general; section 43:

Mr. Chairman: Mr. McLean moves that section 43(b) of the bill be struck out and the following substituted therefor, and that the section be renumbered as section 45:

"(b) 'Minister' means the member of the executive council to whom the powers and duties of the minister under this act are assigned by the Lieutenant Governor in Council."

Ms. Copps: I also have two amendments. I think one has already been answered. The first amendment was that the commission shall submit an annual report to the Legislative Assembly, and I think you have covered that under section 32.

Mr. Chairman: Yes.

Ms. Copps: The second is to be added, and I guess it would have to be section 45(d) at this point, after section 45 et cetera. I am sorry, I want it to be added under the old section 45, which is the new section 47. Right?

Mr. Chairman: Yes.

Section 43, as amended, agreed to.

Section 45, as renumbered, agreed to.

On section 44:

Mr. Chairman: Mr. McLean moves that section 44 of the bill be renumbered as section 46.

Section 44, as amended, agreed to.

Section 46, as renumbered, agreed to.

On section 45:

Mr. Chairman: Mr. McLean moves that section 45 of the bill be struck out and the following substituted therefor, and that the section be renumbered as section 47:

"The Lieutenant Governor in Council may make regulations,

"(a) prescribing criteria or guidelines for boards of inquiry in the making of findings under subsections 40(2) and (3);

"(b) prescribing forms and notices and providing for their use."

Section 47 (a) and (b), as renumbered, agreed to.

Mr. Chairman: Ms. Copps moves that the old section 45 be now amended to include a subsection (c) to be added after section 47(b), as follows:

"(1) Any contravention of the prohibitions contained in part I of this act is a tort actionable without proof of damage;

(2) In an action brought pursuant to paragraph 1, a court may,

"(a) award compensation under any head of damages recognized at common law;

"(b) award compensation for indignity, humiliation and mental suffering; and

"(c) award punitive or exemplary damages.

"(3) Notwithstanding clause (1), no action in tort shall be commenced for contravention of this act until after a complaint has been filed with and investigated by the commission and until after the commission has recommended a board of inquiry under sections 31 and 33."

Ms. Copps: Basically, this is saying that by making the contravention of the prohibitions a tort actionable by law at any point in the proceedings, you are allowing to those individuals who have complained to the commission and who have been denied a board of inquiry the possibility of going to court because, if it is a tort actionable by law, you can go to court. That is specifically spelled out in the Quebec code, where they can actually go to court if the commission deems they do not have evidence for a board of inquiry.

Obviously, from a financial point of view, there is a disincentive for people to go ahead with a complaint unless they feel they have a good case because if they do take it to court, it is going to cost them substantially more than it would under a normal board of inquiry situation.

It responds to the issue, again, that was raised under the case of Bhadauria versus Seneca College, which is that you do not want to see a situation where someone is going to court and the Human Rights Commission at the same time. However, you would like to leave the option open for a person who feels that he or she has

been aggrieved under the Ontario Human Rights Code. If we state that it is a tort actionable by law, then that person will still have recourse to the courts if the commission deems that he or she cannot have a board of inquiry.

Notwithstanding all of that, the cost of going to court would still be borne by the person who wanted to go ahead with the complaint. By stating that it is a tort actionable by law, you are allowing the complainant recourse to the courts at any level in the proceedings, if he has already gone through the commission and the complaint has not been dealt with to his satisfaction. We do have some concerns that were raised by a number of individuals whereby, if the commission decides not to convene a board of inquiry, then there may be a situation where they cannot proceed with the matter to the courts.

Obviously, if there is a board of inquiry decision, that is appealable, and it is specifically stated in the legislation that we just passed. But in this situation it would mean that any person who has a complaint, on both sides, will have a tort actionable by law.

Hon. Mr. Elgie: Let me just say that this principle could apply to many pieces of legislation, for example, the Labour Relations Act. It could be a concurrent or subsequent remedy if one's initial remedy was rejected by, for example, the Ontario Labour Relations Board.

There are certain common law rights that are created on the basis of precedent over the years of common law jurisprudence, for instance, unjust dismissal and a variety of other things, such as assault. It is our view that this statute not only creates rights, but it produces the remedies within its statute.

The government does not propose that this bill should create new tort actions that can be used as concurrent or subsequent remedies other than the remedies that are proposed in this bill. We think it would be, to some extent, very unconscionable that someone who has had a complaint registered against him or her might go through the whole process of investigation, conciliation, non-appointment of a board, might go through a review of that decision not to appoint a board, might go through a judicial review of that decision, might go through an Ombudsman's review of that decision, and still could be faced with a common law action in tort based on a right created within the Human Rights Code.

I think that is really something that moderate people in society, and indeed I myself, would have trouble accepting. There are many avenues open for someone who has had his complaint rejected by the commission. As I have said, they have the right to have it reconsidered and the right to a judicial review, and they can go to the Ombudsman. I do not think there is any need to have to create a fourth right.

Ms. Copps: If the minister is concerned about principles in common law, were the Human Rights Code not established within our legal system, a person would have recourse within common law on the basis of--

Hon. Mr. Elgie: Of what?



Ms. Copps: I think that the case on Bhadauria specifically referred Bhadauria back to the Human Rights Code. They said, "Look, you have got this right set up through this particular code, and you do not have tort actionable in common law."

Hon. Mr. Elgie: With respect, that is not right. There was no actionable tort at common law open to Mrs. Bhadauria. She chose not to go through the Human Rights Code. What she claimed, and what her counsel claimed, was that because there was a Human Rights Code, which created a right, it also created a concurrent common law right, and the Supreme Court of Canada said, "No, there is not a concurrent civil right created because there is a right created in the Human Rights Code."

Ms. Copps: I understand that, but for Bhadauria's decision to go through the courts and through common law--you can refer back to the fact that she did not go through the Ontario Human Rights Commission. In fact, she did on several occasions, but not on this specific complaint. The fact that there was no tort set out in this commission is the very problem we are grappling with. There is an actionable right of tort in Quebec where they have chosen to allow a person at any level in the proceedings to take court action. Generally speaking, what we are doing is setting up ourselves as a court in lieu of the normal court proceedings in this province.

All I am saying is that persons who feel they have an actionable tort should be given the right to go to a normal court of law if they feel that their complaint has not been properly dealt with at any level through the human rights commission.

Hon. Mr. Elgie: Let me just repeat again that there was no question of an actionable tort unless, as Mrs. Bhadauria's counsel claimed, such a tort was created within this code.

Ms. Copps: The tort, I believe, was created through the preamble that we signed, the United Nations declaration, which is also referred to in this code.

Hon. Mr. Elgie: And it was the government's view that the rights that are created in this code also should have, in the context of the bill, the remedial process to deal with those rights. To say that once a non-appointment of a board is recommended is the end stage for any complainant is really just not true. They can not only ask for a review, but they can ask for a judicial review, and the judicial review would be a review of whether or not the evidence warranted the appointment of a board of inquiry.

A divisional court could order that the commission shall order a board of inquiry, or, in addition, they could go to the Ombudsman. But to also say that, having gone through all those steps, they could also start a court action is, I think, asking a lot. I think the government's view is that there are many remedies already available for rights that have been created within the bill.

Ms. Copps: I just refer back to the jurisdiction of Quebec where they have actionable torts and it has worked very well. In fact, people there feel they have had their rights more securely guaranteed through the concurrent use of the courts and the human rights commission.

There is jurisdictional distinction between Ontario and Quebec in that regard, and I am suggesting we should follow Quebec's lead in making sure that discrimination in this province is an actionable tort.

Mr. Chairman: Anything further on this? We are voting now on the new 47(c) as proposed by Ms. Copps.

All in favour? Opposed?

Motion negatived.

Section 45, as amended, agreed to.

Section 47, as renumbered, agreed to.

Mr. Chairman: Mr. McLean moves that sections 46, 47 and 48 of the bill be respectively renumbered as sections 48, 49 and 50.

Sections 46 to 48, inclusive, as amended, agreed to.

Sections 48 to 50, inclusive, as renumbered, agreed to.

Mr. Chairman: Any new sections to be added?

On section 24:

Hon. Mr. Elgie: Mr. Chairman, if I might, counsel have had an opportunity to go back over section 24(3)(b) and we have concluded that although in counsel's opinion it is not really necessary, we are prepared to introduce the word "pre-existing"--on the ground of a pre-existing handicap. Is that not what you wanted?

Ms. Copps: Yes.

Hon. Mr. Elgie: It was made on the ground of a "pre-existing" handicap. We do not accept the "substantially increases the risk" amendment you proposed. On that basis we would be prepared to go ahead to vote on that section.

Ms. Copps: Can we vote on the two things separately then?

Hon. Mr. Elgie: Maybe the members could introduce that amendment.

Ms. Copps: I will introduce both amendments since I had originally introduced them. One is the inclusion of "pre-existing" before "handicap" in section 24(3)(b).

Mr. Chairman: Ms. Copps moves the insertion of the word "pre-existing" in between "of a" and "handicap."

Am I reading that correctly now? Is there any further discussion required on that?

Mr. Stevenson: Is this the pre-existing part?

Mr. Chairman: Yes. All in favour of adding "pre-existing"?

Motion agreed to.

Mr. Chairman: Ms. Copps' motion is carried unanimously. I want that on the record.

Ms. Copps: I would also move that "that substantially increases the risk" be added after "handicap." You are in favour of that too.

Mr. Chairman: This has been discussed.

Ms. Copps moves that the words "that substantially increases the risk" be added after the word "handicap."

Is everybody clear on that?

Motion negatived.

Section 24, as amended, agreed to.

Mr. Chairman: Can we just check this for a second here? While we are checking, I have to apologize to the committee and to Mr. Johnson in that he wished to carry on until next Wednesday. I do not know whether we are going to be able to.

Ms. Copps: Is that everything?

Mr. Chairman: I think so.

Mr. McClellan: There are no matters that have not yet been carried.

Bill 7, as amended, reported.

Mr. Chairman: Before we adjourn I ought to express the appreciation, particularly of the chair and I think of all members, to the members of the committee and the many members who have substituted in. It has been a long session, there have been a lot of briefs and there have been a lot of hearings that we have gone through.

While the bill we are reporting back may not represent exactly what all members have sought to achieve--from all three parties I might add--I think it does represent I do not know how many months of work and a lot of input. Certainly on behalf of the chair I would like to express my appreciation for the conduct of the committee and the way we have been able to move in quite an orderly fashion. I say that in a very complimentary fashion to all members who are here tonight and those who have substituted in.



Ms. Copps: Especially to all of us who tabled our amendments.

Mr. Chairman: Right. I certainly express appreciation too to Mr. Renwick, not that we finished tonight because he was not here, but because Mr. Renwick took a very strong interest in the bill, assisted us with a lot of information and made all the information available to the committee and was instrumental in having the committee accept his recommendation to involve legislative library research and whatnot. I know he is not here tonight, but I thought we ought to express that as well since he is not.

I have nothing to further to add.

Mr. J. M. Johnson: Excuse me, Mr. Chairman, just before we adjourn I would like to compliment you on conducting an excellent committee. You served, I would think, the three parties well and you have served me--

Ms. Copps: There is only one proviso. He is a lousy tie-breaker.

Mr. McNeil: I just want to substantiate what Mr. Johnson has said. You have done a terrific job and I want to compliment you, Mr. Chairman. I have sat on quite a number of committees. This was a difficult committee but you did a terrific job. Congratulations.

Hon. Mr. Elgie: I agree with the chairman's remarks and the members' remarks.

Mr. Chairman: Thank you, Mr. Minister. Once again we adjourn early.

The committee adjourned at 10:10 p.m.





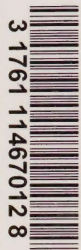






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